

[4th November 1933]

[Note.—An asterisk (*) at the commencement of a speech indicates revision by the Member.]

II.—A BILL FURTHER TO AMEND THE MADRAS ESTATES LAND ACT, 1908, FOR CERTAIN PURPOSES (BILL No. 12 of 1931).

Clauses 7 and 8.

* The hon. the PRESIDENT:—“ We have finished consideration of the amendment moved by Mr. Siva Raj, viz., Amendment No. 78. Before proceeding further, I wish to inform the House that clauses 4 and 5 have been held over until Monday. Clauses 3 and 6 have been omitted and they will not be put to the vote of the House. The question is—

‘ clauses 7 and 8 do form part of the Bill ’.”

The motion was carried.

Clause 9.

Section 13 (3).

* Diwan Bahadur B. MUNISWAMI NAYUDU:—“ Sir, I beg to move the amendment standing in my name in an altered form—

‘ in lines 5 and 6 for the words “ to the cost of which the landholder has not contributed ”, the following may be substituted:—

“ which is not effected by the landholder ”.”

I do not move the rest of the amendment given notice of by me. Section 13 of the Act makes provision for improvements being made in regard to lands. Under clause (1) of section 13 power is given either to the ryot or the landholder to make the improvements. One cannot prevent the other from making improvements. A ryot may make improvements, may dig a well so that he may raise better crops; or the landholder may dig a well or make some improvements to enable the ryot to raise better crops. Sub-clause (2) of section 13 decides as to which of the two—the landholder or the ryot—will be entitled to make improvements. If both the ryot and the landholder wish to make the same improvement, the ryot shall have the prior right to make it, unless it affects the holding of another ryot under the same landholder, in which case the landholder shall have the prior right. Clause (1) says that both the landholder and the ryot may make the improvements as they like. Clause (2) gives preference to the ryot if the improvement affects only his land; if the improvement affects not only the land of the tenant but the lands of other tenants also, the landholder may make the improvements. Under clause (3) of this section, it is intended to secure to the tenants the benefit of their improvements. If the tenant should make improvements and raise better crops as a result of the improvements he has made, he is not liable to pay any higher rent. That was the policy of the Government and of the legislature when the existing Act was passed. That provision has been repeated here in clause (3). The present provision requires that the improvement should have been made by the tenant at his sole expense. If the improvement is made at his own cost, notwithstanding any usage or contract

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to the contrary, he shall not be liable to pay higher rent. This subsection was the subject of various decisions of the High Court; ultimately they held that, if any small contribution—however small it may be, however insignificant it may be—is made by the landholder, then the benefit of this clause would not be available to the tenant. I may quote one instance which is rather peculiar. In one or two estates in my district the custom is for the landholder to collect rent, the rent varying with the crop that is raised, a certain rate for a particular crop and another rate for another crop and so on. The landholder is entitled to charge on the actual crop that is raised; if there is no cultivation at all on the land, then no charge is made because there was no crop. Such a system prevails in Ramnad also. What is charged is only when the crop is raised and not when the land is left unused. Under such a system if a tenant digs a well on his own patta land, the particular portion occupied by the well cannot naturally be cultivated thereafter. According to the local custom that particular portion is not charged with rent. When the question arose under section 13 (3), the landholder contended that, as he did not charge rent for the area occupied by the well, he made a contribution and that therefore the well cannot be said to have been sunk by the tenant at his sole expense.

“ Even though the tenant might have sunk Rs. 1,000 on the improvement, if the landlord has helped to the extent of a few annas, the tenant is not to have the benefit of the improvement but has on the other hand to pay a higher rent, even as though the whole amount of Rs. 1,000 has been spent by the landlord.

“ In some cases objection was raised by the landlord that he gave some trees standing on waste land for being cut or allowed mud for some brick-kilns to be burnt. The landlord said that they were his contribution to the improvement, although it cost the tenant some Rs. 1,000; yet, he is not to enjoy the benefit of the improvement because the landlord has given a few trees from waste land. I do not think, Sir, the legislature ever intended that a tenant should be deprived of the benefit of the improvement merely because a small contribution has been made by the landlord in circumstances which it may be impossible to establish after a long period of time. It may be that some small amount was or was not received as contribution, but yet it is open to all sorts of defence being raised invariably by the landlord to the effect that he contributed something towards the development. Therefore I think it is absolutely essential that when an improvement is made by the tenant by reason of which the land itself has been improved and better crops are raised, the tenant should not be deprived of the benefit of that improvement. If at the time the tenant made the improvement, the landlord obliged the tenant by giving something, I am sure that question should have been considered even when it was so given. We must consider an improvement to come under one of two classes; it must be made either by the landlord or by the tenant. If it is made by the landlord, he should get the benefit of it; but if it is made by the tenant and if the tenant himself has been responsible for the improvements

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he should be allowed to have the benefit of it. Therefore, I submit, that for purposes of section 13 (3), the mere fact that there has been some contribution made by the landlord should not be the deciding factor but that on the other hand the tenant should be allowed the benefit of the improvement. My amendment has got this advantage, that if the improvement is made by the landlord and if the tenant has made some contribution towards it, that contribution should not be taken into consideration but it should be considered that the improvement was made by the landlord, for which he should be entitled to a higher rent. Instead of saying that higher rent ought not to be charged for an improvement made by the tenant at his sole expense, it is better to say that higher rent may be charged for an improvement made by the landlord and that higher rent ought not to be charged for improvement made by the tenant. That will be a clearer definition than the one found in the present clause. The present clause simply says:

‘Notwithstanding any usage or contract to the contrary, the ryot shall not become liable to pay a higher rate of rent on account of any increase of production or of any change in the nature of the crop raised, as a consequence of an improvement to the cost of which the landholder has not contributed.’

“I move this amendment with a view to make it clear that the improvement should be one made either by the tenant or by the landlord. If it is made by the tenant, he should have the benefit thereof; and if it is made by the landlord, then he should have the benefit of it. It is not proper to deprive the tenant of any share in the benefit of the improvement just because the landlord has made a small contribution towards it.

“You will also find, Sir, that a new clause is introduced in section 32 of the Act by which power is taken to enable the landlord to make any improvement at his own cost with the sanction of the Collector and after the improvement is effected, to have it registered, so as to secure to the landlord the benefit of the improvement so effected, in the shape of enhanced rent. Under these circumstances, I do not think there will be any real hardship in accepting this amendment; on the other hand, we will be setting at rest disputes that may arise as to who made the improvement, whether the landlord in any way contributed towards it or not. I think this is a much easier method of avoiding such disputes. I have also omitted the words ‘at his sole cost’ in my amendment with a view to make it clear that even if the landlord got a little contribution from the tenant, he should continue to enjoy the benefit of the improvement because he would still be the major contributor.”

* MR. V. P. NARAYANAN NAMBIYAR:—“Sir, I beg to second the amendment that has been moved by my hon. Friend. When the words ‘to the cost of which the landholder has not contributed’ were added, the Government must have had in view only substantial contributions by landholders. The word ‘contributed’ is a wide and elastic word that would include either an insignificant contribution or a contribution of any kind.”

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* Rao Bahadur Sir A. P. PATRO:—"Sir, both justice and equity are in favour of the amendment proposed by my Friend. Section 13 (3) according to the Bill simply says: 'to the cost of which the landholder has not contributed.' The question is what is the contribution that the landholder has to make, so that he may in equity be entitled to a share of the improvement. That is all that is necessary to be considered in this case. The hon. Mover Mr. Muniswami Nayudu has clearly explained to what extent the landholder should be entitled to a share of the improvement. It is admitted that an improvement should be made either by the ryot or by the landholder himself. If the landholder makes it at his own cost, he should be entitled to an increased rent. On the other hand, if the ryot makes the improvement at his own cost, then there shall be no right for the landholder to enhance the rent. That is the position. What happens in practice is altogether different. I can add another instance to the two or three that were mentioned by Mr. Muniswami Nayudu. A culvert has to be built with a view to divert the drainage water in order to save the lands from being flooded. That costs about a thousand rupees. All that the ryot does is that he takes some stones from the quarry from a hill situated within the area belonging to the landholder; and the royalty paid for the stones to the local board is perhaps 2 annas per cartload or cubic yard or some such thing. Suppose 80 or 100 cartloads of stones have been taken, or in other words Rs. 10 or Rs. 12 worth of stones have been taken for the construction of the culvert. What really happens is the landholder claims enhanced rent. The matter goes to court and the court construes also that this free supply of stones from the quarry is a contribution towards the improvement of the land. It was successfully contended in a case, I remember, that the granting of a few cartloads of stones for the purpose of building a culvert which averted danger to the lands, improved the crops and amounted to an improvement, although the expense was borne by the ryot to the extent of a Rs. 1,000, while the landholder had contributed only to the extent of Rs. 10 or Rs. 12. The court held, most inequitably, that the landholder would be entitled to an enhanced rent and the tenant was obliged to pay. So, circumstances like this might arise where even the smallest contribution by the landholder may go towards the enhancement of rent payable by the ryot. Such a thing is altogether inequitable. I am sure the hon. the Revenue Member will realize that such cases are very common. In such cases it is really unfair that the landholder should ever dare to claim a share in the benefit of the improvement by asking for enhanced rent. I hope, Sir, the hon. the Revenue Member will appreciate the importance of the suggestion made by the hon. Member for Chittoor and accept his amendment."

* Mr. C. R. PARTHASARATHI AYYANGAR:—"Sir, difficulties in the working of section 13 (3) of the Act arose in this way. A tenant made the improvement at his own expense and it was construed that if the landholder contributed even to a small extent towards it the ryot was to be deprived of the benefit of the improvement. The object of this

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amendment is to give one of two alternatives. The landholder, if he wants to claim the benefit of the improvement for himself, must make the improvement himself at his own expense. All sorts of help may be rendered to the tenant by the landholder, such as timber, stones to be used in the construction of wells, supply of mud for brick, kilns, etc.—all these are real sources of help by the landholder to the tenant. Such help has been regarded as help to the tenant and the application of section 13 (3) was easily evaded. To illustrate this, I may refer to a case in 28, Madras Law Journal where Their Lordships of the Madras High Court held that a contribution lay in the fact that poramboke wells supplied water for some of the lands of the tenants. If wells are dug in poramboke lands and if water is taken by the tenant from those wells, it is thought that it is a contribution by the landholder for the purpose of helping the tenant and that therefore the landholder is entitled to a share of the improvement. Later on, as late as April 1933, it was sought to distinguish it in another way. It was stated that it was not poramboke wells alone that came within that category; but that if the tenant digs a well in his own land and thereby contributes to increased production, even then the landholder should be entitled to a higher rent. This was of course contested by the other party. That is why, in order to avoid such disputes, this suggestion is made in the amendment now brought forward. There are only two categories of improvements: those made by the landholder and those made by the ryot. If the present vagueness of the words in the Bill is allowed to continue, all sorts of distinctions will be made. It is therefore better that we clear this point once for all. Reference to the judgments of the Madras High Court will show how the interpretation of this clause has been full of contradictions, leading to all kinds of conflicting rulings. In order to avoid this difficulty, it is obvious that the amendment moved should be accepted."

* Mr. K. P. RAMAN MENON:—"Sir, the amendment proposed by the Select Committee would be worse than the original section itself unless it is amended properly, as pointed out by my hon. Friend, Mr. Muniswami Nayudu. Clause (3) of section 13 of the Act is:

'Notwithstanding . . . the ryot shall not, by reason of making an improvement at his sole expense, become liable to pay a higher rate of rent on account of any increase of production . . . etc.'

"The first question that had to be decided was as to who made the improvement.

"That is sought to be avoided by the amendment proposed by the Government and the words 'sole expense' have been deleted, and instead of that, the words 'to the cost of which the landholder has not contributed' have been put in. 'He has contributed' is perhaps a much wider term than 'sole expense' because the contribution may be in various ways. If the improvement is made by the landholder at his own expense, then the landholder must be given the benefit of any increased outturn consequent on his outlay on the land, in the shape of increased rent. If, on the other hand, the improvement is effected at the

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expense of the tenant, the tenant must get the benefit of that improvement and the landlord then cannot ask for enhancement. If that principle is accepted, we shall then have to consider how to bring out that idea into the Act. Now in choosing the wording, the word 'contribution' is a very large or vague term. The contribution may be in cash or otherwise. Suppose the landholder is making some improvement to the land and the tenant contributes free labour to effect that improvement, labour for which the landholder will ordinarily have to pay at the rate of 4 annas a day or so. Such labour will be a contribution by the tenant, and it can reasonably be argued that the ryot's labour is a contribution in the process of making the improvement, and he is entitled to the benefit of the improvement. Similarly it can be contended that if the landholder contributes even in the way of use of tools, it would amount to a contribution by the landholder, and he can claim enhancement on that ground. So that the word 'contribution' is, I submit, a dangerous word. And the difficulties arising from the use of that word can be avoided by accepting the amendment proposed by my hon. Friend, Mr. Muniswami Nayudu."

* The hon. Sir ARCHIBALD CAMPBELL:—"Mr. President, Sir, in the Act as it now stands a ryot is protected from enhancement of rent under sub-section (3) to section 13 on account of an improvement made entirely at his sole expense, but he is not protected from enhancement on account of an improvement in any other case, that is to say, if the landholder has made any contribution at all to the improvement. The ryot has to show that the improvement was effected entirely by himself and that nobody else has assisted him. Under section 30, sub-section (ii), the landholder can sue for enhancement of rent on the ground that during the currency of the existing rent the productive powers of the land held by the ryot have been increased by an improvement effected by or at the expense of the landholder. And under section 32 the cost of the improvement will have to be taken into consideration in determining the enhancement of rent. In the speeches made by hon. Members now an attempt has been made to show that the interpretation put on these sections by the courts has been that the whole cost of the improvement may be taken into consideration for enhancement of rent, whether that whole cost was borne entirely by the landholder or not. But I think the amendment of my hon. Friend, Mr. Muniswami Nayudu, goes too far. It is to my mind most desirable that we should encourage the landholders to effect improvements in their estates, and, in the second place, that we should encourage landholders and tenants to co-operate together to that end. The amendment now proposed by my hon. Friend, Mr. Muniswami Nayudu, discourages that co-operation. It provides for two classes of improvements: those effected by the landlord at his sole expense and those effected by the tenant at his sole expense. But the amendment rules out altogether those improvements that are effected by the two, the landlord and the tenant, working together.

"Now, Sir, the object of this amendment is to provide for the tenant a protection from enhancement of rent where the landholder has not

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contributed towards that improvement, but it is only fair that when the landholder has contributed towards the improvement, he should get some enhancement of rent. I am quite prepared to accept an amendment to sub-section (b) (ii) of section 32 which relates to the cost of improvements. I shall be prepared to consider an amendment of that sub-section to lay down that only the cost incurred by the landholder in the improvement shall be considered by the court in determining the enhancement of rent."

* Diwan Bahadur B. MUNISWAMI NAYUDU:—"Section 16 provides for improvements made jointly by the landholder and the tenant. This section says that a landholder may apply to such Revenue Officer as the Local Government may appoint, to register any improvement which he has lawfully made or which has been lawfully made at his expense or which he has assisted a ryot in making. So, wherever a landholder assists a ryot in making an improvement, that fact will be taken into consideration in fixing the enhancement."

* The hon. Sir ARCHIBALD CAMPBELL:—"As now proposed to be amended by my hon. Friend, Mr. Muniswami Nayudu, section 13 (3) will read as follows:

'Notwithstanding any usage or contract to the contrary, the ryot shall not become liable to pay a higher rate of rent on account of any increase of production or of any change in the nature of the crop raised as a consequence of an improvement which is not effected by the landholder.'

"It will mean that the improvement should be effected by the landholder entirely. I should have no objection to add the words 'which is not effected by the landholder or to the cost of which the landholder has not contributed' after the word 'improvement' in the sub-section. I would also suggest an amendment of section 32 (b) (ii) as I already said."

* Diwan Bahadur B. MUNISWAMI NAYUDU:—"May I suggest, Sir, that this amendment may be taken up after lunch, so that we may see meanwhile in what form our object can be given effect to, and what clauses have to be amended for that purpose?"

The suggestion was accepted and the amendment was accordingly postponed till after lunch.

Clause 10.

Section 17-A.

MR. ABDUL HAMEED KHAN:—"Mr. President, Sir, I beg to move the following amendment:—

'In line 2 of proposed section 17-A, add the words "after giving due notice to the ryot and without causing damage to the crops" after the words "authorized agent may".'

"This is a very harmless amendment because it is not going to affect the rights of the zamindar. What is suggested in this amendment is to just guarantee that the crops of the ryot are not affected by unnecessary vandalism that might be practised by any of the landholder's agents either advertently or inadvertently. So, Sir, I hope this harmless amendment will be accepted."

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Mr. BASHEER AHMED SAYEED seconded the motion.

* Rao Bahadur Sir A. P. PATRO:—"Mr. President, Sir, I am constrained to oppose this amendment. It is unnecessary and it is a source of irritation between the landholder and the tenant. To give notice to the ryot for entering the field for the purpose of measuring it means lot of trouble. The hon. the Mover may not perhaps know how difficult it is to serve a notice on the ryot. Even for the purpose of measurement or division of produce at which it is supposed to be in the interest of the ryot, to be present, we know, as a matter of fact, considerable difficulty is experienced to serve notice on the ryot. That is one thing.

"Then you say that it should be done without causing danger or damage to the crops. I may say, Sir, no landholder's agent will enter upon a field when the crop is ripe thereon. It is only when the land is dry and when it is possible for him to enter the field for the purpose of measurement, the agent will step in. If there is any difficulty regarding irrigation, he may have to enter on the land. For all ordinary purposes, there is such an amicable arrangement and relations between the landholder and tenant that hardly any difficulty arises in the matter. So far as my experience goes, I have not seen anywhere the ryots complaining to me against the zamindar's agents for entering upon the land and destroying or damaging the crops. There are other complaints against the zamindari agents but not this sort of complaint. This amendment will unnecessarily bring on a great deal of irritation into the relation of landholders and tenants."

* The RAJA OF KHALLIKOTE:—"Mr. President, Sir, I wish to oppose this amendment. I think it is absolutely unnecessary. It may lead, as my hon. Friend Sir Patro said, to misunderstandings between the landlord and tenant. As matters stand at present, the tenants are very anxious that the landholder or his authorized agents should go to their fields to inspect them or measure the lands in cases of disputes. To give notice to the tenant is a great practical difficulty when the landholder wants to measure the land or inspect the standing crop.

"Moreover, it is provided that at all reasonable times the landholder or his agents will inspect the land. Whenever the landholder or his agent wants to enter the land, they intimate the fact to the ryot, and there is absolutely no trouble over this. So I think this amendment is unnecessary."

* Sriman M. G. PATNAIK Mahasayo:—"Mr. President, Sir, the Raja of Khallikote stated that the relations between the ryot and the landholder are very cordial and so any such provision as is contemplated in this amendment is unnecessary. Then why this section 17-A is at all necessary I do not see. The introduction of this clause itself is sufficient proof that the relations are not so very cordial. A landholder may enter upon the land without some authority for him to do so. To say that the relations are now cordial and there is no need for this amendment is to my mind meaningless.

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“ And then the second thing is this. Sir Patro has also stated that it is very difficult to serve notice upon the ryot. I say it is very easy to serve notice on the ryot. It is only when notice is ordered and the zamindar's agents do not want it to be served there would be difficulties. But in fact it is very easy to serve the notice; it can be done by registered post. The zamindars do not go to the lands, it is only their agents that go there; and there is much misunderstanding between these agents and the ryots, and these agents go on the land and damage the crops. All these things may not be known to the zamindars; I do not say the zamindars authorize their agents to go on the land and cause damage to the crop, but the agents actually do so. Therefore it is necessary to serve notice. There is another objection. It is not enough if notice is given to the ryot. It should be given to the actual cultivator. There is no reason why such a notice should not be given. It only means delay of a few days; as soon as the notice is served, the measurement can take place, and there is no difficulty at all. There may be misunderstanding if the ryot does not allow entry on the land for purposes other than measurement of the land. It is for that that the provision in section 17-A has been found necessary.”

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* Mr. V. P. NARAYANAN NAMBIYAR:—“ Sir, I am also opposed to this amendment. As has been pointed out by Sir Patro and the Raja Sahib of Khallikote, this amendment is unnecessary. Apart from that, my hon. Friend, Mr. Patnaik, was trying to make out that there is no objection in giving ‘notice.’ But the question has to be looked at not that way. Has there been any complaint that the ryots have suffered for want of notice whenever the authorized agents entered the field? Not only is the amendment unnecessary, but it might work mischief too.”

* The hon. Sir ARCHIBALD CAMPBELL:—“ My hon. Friend from Ganjam, Mr. Patnaik, stated that this is a new clause. I would draw his attention to the fact that section 43 provides that ‘every landholder may, by himself or by any person authorized by him in this behalf, at any time enter on and measure any land comprised in his estate, for the purposes of the last preceding section’. In the new provision the scope has been widened so as to cover any of the purposes of this Act. We have substituted for the words ‘at any time’ the words ‘at all reasonable times.’ The reason has already been explained to hon. Members.”

“ I consider it is quite unnecessary to require the landlord to give notice before visiting the land.”

“ As regards damage, I invite hon. Members’ attention to section 213 which already provides that:

‘Any person deeming himself aggrieved by any proceedings taken under colour of this Act shall be at liberty to seek redress by filing a suit for damages before the Collector.’

If the proposed amendment were inserted, no fresh remedy would be given in addition to what already exists. It would simply mean that

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the ryot could file a suit before the Collector on the ground that he had no notice though no damage has been caused. That I think, as already pointed out, will be a further strain on the relationship between the landlord and tenant. I submit this amendment is unnecessary and may lead to undesirable results."

* Mr. T. S. RAMASWAMI AYYAR:—"The hon. the Revenue Member has said that this is not really a change; in that there was section 43 before in the old Act itself. But in the course of his speech he has made it clear that there is difference between 17-A and the old section 43. Under section 43, opportunity was given to the landlord to inspect the fields only for the purpose of section 42. But, in the present case power is given to inspect for all purposes, not for a specific purpose under section 42 alone but for other purposes also. For example, in connexion with commutation, levy of water-cess and such other purposes, it may be necessary to enter upon the land. The question raised is whether the tenant concerned should not have an opportunity to know when the landlord enters upon the land. A point has been made that this may cause unnecessary irritation between the landlord and the tenant while they are getting on well. But the question is not one of ill-feeling between the landlord and the tenant. In many cases it is not the landlord but it is his agent that gives the trouble. If the agent enters a field for measurement or for other purposes without the knowledge of the tenant, then, Sir, it must be open to the tenant to challenge the correctness of the measurement. In such cases, to give notice to the tenant would obviate difficulties. If it is difficult to give notice, the tenant should not on that score be denied an opportunity to be present when the landlord or his agent enters upon the field."

* Diwan Bahadur A. APPADURAI PILLAI:—"Mr. President, Sir, I merely wish to point out to the hon. House that this is not a new provision. It is a provision that has been taken from section 43 of the old Act. Section 43 provides:

'Every landholder may, by himself or by any person authorized by him in this behalf, at any time enter on and measure any land comprised in his estate, for the purposes of the last preceding section.'

"My hon. Friend, Mr. Ramaswami Ayyar, has pointed out that this new provision goes a little beyond the original provision. For all purposes of this Act, he may measure any land and to give notice at every stage would only make the provision cumbersome. As much as possible, for the purpose of maintaining cordial relationship between the landlord and the tenant such restrictions as these should be removed. If we insist upon notice at every stage, it will only make this a business concern. The relationship between the landlord and the tenant ought to be reciprocal and cordial. The more we allow them to come together and settle matters without the intervention of notices, etc., the better for all concerned. That is my point. No doubt, this provision goes a little beyond section 43. I admit that. But, for what purpose does the landholder enter upon the land? It is not for the purpose of annoying the ryot. Neither would he cause any damage

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because that would only react on him. It is not in the real interests of the landholder to step upon a ryot's land and cause damage to the crop, etc. I really think from what the hon. the Revenue Member has stated this amendment is unnecessary and I would request my hon. Friend, the Mover, to withdraw it."

MR. ABDUL HAMEED KHAN:—"Mr. President, Sir, if really my amendment is unnecessary from the point of view of those who have spoken before me, particularly the landlords in this House, I do not know why they were very anxious that this motion should not be made. The very fact that they considered it unnecessary and then opposed it proves that my amendment should be moved. Then Sir, Sir Patro waxed eloquent and said that it causes irritation into the relationship between the landlord and the tenant which is now very satisfactory and that they are carrying on harmoniously. If that were so, I do not think there would have been any necessity for this huge Bill that we are considering for so many days. The fact that the landlord has been pressing the tenant, has been rack-renting him and reduced him to the position of a serf is a thing which has made the Government responsible for their welfare and hon. Members representing the landlord and the tenant take such a lot of trouble over this Bill. Such being the case, why should they not make a small concession which the tenant asks for? All that he says is 'don't get into the land without telling me that you are coming. Let me know when you will be coming and don't come yourself and do the devastation that you have been doing.' To avoid that 'and to enable him to be present when the measurement takes place, such a notice is necessary.' The hon. the Revenue Member pointed out that there is already a section and this is a new section that has been introduced. I say, Sir, it is all the more necessary that the amendment should be made from the point of view of the tenant. Therefore, Sir, I hope the Government will accept the amendment."

The amendment was put and lost.

* Sriman M. G. PATNAIK Mahasaya:—"I move—

'Insert between the words "may" and "at all reasonable times," the following:—

"after at least a week's previous notice to the actual cultivator."

"This amendment wants a week's previous notice to be given to the actual cultivator who may not be the ryot. Therefore, previous notice is required."

MR. P. V. KRISHNAYYA CHOUDARI:—"I second it."

* The hon. Sir ARCHIBALD CAMPBELL:—"Mr. President, Sir, I must oppose this amendment. It seems to me that this is worse than the last amendment. The landlord has no register of the actual cultivator of each land. All the objections to the last amendment will apply to

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this. If the actual cultivator does not suffer any damage in consequence of the entry into the land, he has a remedy under section 213 of the Act.

Mr. BASHEER AHMED SAYEED:—"I do not see why the hon. the Revenue Member should be nervous in an amendment of this nature. The Transfer of Property Act contains a provision for notice being given. The tenant may have to put up a fence or keep a hut or valuable property and so many contingencies might arise. Without notice being given to him, the entry may lead to considerable difficulties. After all, it is an innocent and harmless provision. The hon. Member from Ganjam wanted to make out that much irritation will be caused. I do not know how irritation could be brought into the relationship between the landlord and the tenant. If they have to get on smoothly, there must be something to limit the respective rights. These are parties willing to get their rights defined. Already the Transfer of Property Act contains that provision. Why not the hon. the Revenue Member accept this small amendment?"

*** Rao Bahadur Sir A. P. PATRO:**—"I am afraid the hon. Member has not properly understood the significance of this amendment. The Transfer of Property Act is not applicable here. In the Estates Land Act, there is a clear provision in section 43 which has been already referred to by the hon. the Revenue Member. The present Act makes a slight alteration in saying that the entry can be made for any of the purposes of this Act. Now in order to obviate any such difficulty that may arise to the tenant, this amended section runs thus: 'May, at all reasonable times enter upon any land.' Therefore, the amendment made by the Select Committee is very much in favour of the tenant and the present section never contemplated any such notice being given to the tenant. Such notice in practice, hon. Members will find, is quite unnecessary, because it is in the presence of all the villagers that they go and do it."

***Mr. K. P. RAMAN MENON:**—"Sir, I am not convinced of the necessity for this amendment. The relationship between the landlord and the tenant has been going on for the last twenty-five years without any notice passing between them on this matter. I therefore fail to see why notices should now be made necessary when no similar provision was in existence before."

12-30
p.m.

*** The RAJA OF KHALLIKOTE:**—"Sir, I wish to raise only one practical difficulty that will arise if notice is to be given. In all villages where sharing system prevails the landholder has to inspect the crop and the inspection is done in company with the ryot. The ryot and the landholder are anxious that the lease for the year is settled as early as possible. If for each ryot a week's notice has to be given every time, it will cause great hardship and inconvenience to the villagers themselves especially in villages where the sharing system prevails."

[The Raja of Khallikote] [4th November 1933]

If a week's notice is to be given, the result may perhaps be that in the meantime the paddy crop will get ruined as it cannot be cut until leases are settled. For this reason, this amendment seems undesirable."

Mr. R. MADANAGOPAL NAYUDU:—"Mr. President, I think this amendment is certainly much worse than the previous one in this way. The speech of Mr. Basheer Ahmed Sayeed will apply as well to the landholder as to the ryot. Here the notice is to be given to the actual cultivator, who need not necessarily be the ryot, and this amendment seeks to give the cultivator a privilege which has been refused even to the ryot by the previous amendment having been negatived. It is really absurd to accept an amendment of this nature and give a privilege to a person who possesses much less right under the law than the ryot himself."

* Sriman M. G. PATNAIK Mahasaya:—"Sir, I really do not see how the actual cultivator is in a much worse position than the tenant himself. It is his property that is likely to be damaged, that is the crop. He is the person interested in the crop. He cannot be treated as a trespasser by the landholder simply because he is not a ryot under the landholder. He is a man who has entered upon the land with sufficient authority from the ryot. Therefore, I cannot see how his position is worse.

"Secondly, it was said that section 17-A was only an amplification of section 43. Therefore, it is not a new section at all. Where is then the necessity for the amplification of section 43 and introducing this section 17-A? Naturally, the zamindars found it difficult to enter upon the land for other purposes than those mentioned in section 43, and that is the reason why they wanted that this section should be more comprehensive, so that their agents may go upon the land at any time they pleased.

"If as Sir Patro said the relations were cordial, there would have been no necessity for amplifying section 43 at all. In practice, it was considered necessary to amplify the power to enter upon the land. If the relations are so very cordial, simply because a notice has been given, I do not think it will affect the relationship between the landholder and the ryot. That the relations are cordial is not a thing which should determine whether a notice should not be given to the cultivator to be present at a particular place on a particular date. If such a notice is given, will that cut off the cordial relations between the landlord and the tenant? I do not see that at all.

"The Raja of Khallikote said that there would be delay in appraising the crop. Of course only the zamindar's agent goes to inspect. What harm is there if a notice is given to the cultivator and his signature taken before the agent goes to the villages where crops are to be appraised? Therefore, it is an objection without any force in it."

The amendment was put and lost.

Clause 10 was put and carried.

[4th November 1933]

Clause 11.

Section 20.

* Diwan Bahadur B. MUNISWAMI NAYUDU:—"Sir, I move the amendment standing in my name, viz.—

'Renumber proposed section 20 as section 20 (1) and insert the following as section 20 (2):—

"(2) Any person aggrieved by such decision may within a period of one year from the date thereof institute a suit in the civil court to establish the right claimed by him in respect of such land but subject to the result of such suit, if any, the Collector's decision shall be final".

"Section 20 is a new section which provides for the determination of rights in what are called communal lands which are described in the definition of ryoti land as being outside the scope of ryoti land. There are three kinds of communal lands, viz., firstly tank beds, secondly threshing floors, cattle-stands, pasture grounds and other communal grounds, and thirdly service inam lands. So long as service is being performed, service inam will be outside the scope of ryoti land. This section provides for the ascertainment of the fact as to whether any land is of the nature provided for in sub-clauses (a), (b) and (c) of clause (16) of section 3, i.e., of the above descriptions and as to what the customary rights are in the user of such land. The object is that these rights should be determined by the Collector so that there may be no encroachment either by the landlord or the tenant to the prejudice of the rest of the village. The section provides, as you will see from the schedule at the end, for an appeal being taken to the District Collector, and there it stops. The result therefore is that an application may be made to the Collector upon which there is an appeal before the District Collector. The questions involved here are likely to be questions involving title or right. It is therefore essential that in the case of a decision under section 20 where questions of title or rights are involved the parties who might suffer must have the right to settle the affair in a court of law. It is with this purpose I move this amendment so that questions of title or rights may not be prejudiced."

Mr. P. V. KRISHNAYYA CHOUDARI:—"I second it."

Mr. M. A. MANIKKAVELU NAYAKAR:—"I support this amendment, because in many cases it happens that the Collector is not quite conversant with the conditions, and so he will not be the best judge in deciding upon questions connected with threshing floors, pastures, etc. Therefore, the right of appeal to the court is quite necessary, and I do not see what the Government will lose by accepting a provision like this for appeal."

* The hon. Sir ARCHIBALD CAMPBELL:—"Mr. President, as regards the remarks of the hon. Member who spoke last, I may say that an appeal to the District Collector is provided for, and the Board of

[Sir Archibald Campbell] [4th November 1933]

Revenue also have power to review it. If hon. Members of this House are anxious that an appeal should lie to the civil court from the District Collector, I have no objection."

* Mr. C. R. PARTHASARATHI AYYANGAR:—"Sir, it all depends on the spirit with which this Act is worked. The question is whether the revenue authorities will think of reconstructing the village as it should be or whether the civil court can do it. We find everywhere in this Act the Collector coming in, and practically the discrimination of the villagers should give place to the power vested in the revenue authorities for the purpose of helping the landholder and the ryot to come to a conclusion on many matters that may arise for decision. I think, Sir, that as far as possible we should go to the civil court for the purpose of determining what ought to be done in the interests of the village. Otherwise, the matter will become more and more difficult as we reach the later stages of this Act. It is therefore clear that the object of our amendments should be that the landlord and the tenant should be made to approach each other more in a spirit of friendliness than it was possible formerly. Now it remains to be seen how the Collector will help in enabling the ryot or the landholder to come to an understanding with each other.

"As at present constituted, it appears to me that the civil court may be more efficient because they have a longer range of views for the purpose of coming to a conclusion as to what is best in the interest of the village to bring it back to its original position. I therefore think that it is advisable that a remedy should be provided that the ultimate fate of questions involving vital decisions as regards the relationship between the landlord and the tenant should be left in the hands of the civil court rather than with the revenue authorities."

12-45
p.m.

* Rao Bahadur Sir A. P. PATRO:—"Sir, the section is a new one, but it is a very necessary provision. When a disused communal land is reclaimed or utilized for communal purposes of the village, the Collector has got the power to enquire and decide any dispute relating to it. The question now is whether his decision shall be final or whether there should be an appeal provided to the District Court or the Revenue Board. I would personally prefer that there shall be no appeal against the decision of the Collector. Even in cases where the Estates Land Act makes provision for revision by the Board of Revenue, no power of appeal is provided for. Summary remedy would save the parties from great expense in connexion with the progress of the case from court to court. I am against tempting the ryot to go to court for a number of years and ultimately ruining himself. I am therefore opposed to the amendment moved by my hon. Friend Mr. Muniswami Nayudu making provision for a suit in a civil court. We must realize that in a civil court there is absolutely no certainty that a decision would be arrived at within a reasonable period. What we want is speedy justice. This amendment is therefore unnecessary in the interests both of the ryots and the landlords. What is required is a speedy settlement of their

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[Sir A. P. Patro]

disputes so that good relations between the landlord and the tenant may be restored as speedily as possible. In cases where the Collector makes a decision regarding the acquisition of a land, there being a revision provided, it is not necessary to make provision to have resort to civil court. I am opposed to that part of the amendment."

* Diwan Bahadur Sir ALLADI KRISHNASWAMI AYYAR:—"Sir, I simply want to explain one aspect of the question. If it is not to be by an application but by a suit that remedy is to be provided for each individual ryot, I doubt whether it would be to the advantage of the ryot at all. Because, if a suit is launched by a ryot it may not be binding upon the other ryots and it cannot be taken advantage of by them. So far as any remedy by an application is concerned, every ryot can take advantage of it and take it to the Collector. There is no question of *res judicata* existing excepting so far as the particular tenant is concerned. Otherwise, if you want to have a final and binding adjudication so far as all the ryots are concerned, there must be a representative suit filed. I doubt very much whether such a procedure is in the interests of the ryot. It is for the House to consider whether each individual ryot must have the luxury of litigation, without the other ryots being entitled to take advantage of the decision reached in a suit filed by an individual ryot."

* Diwan Bahadur B. MUNISWAMI NAYUDU:—"May I just point out to the Advocate-General that if a landlord makes an application, notices will be given to all the ryots and then it will be binding on them all. You will have to consider that aspect also."

* Diwan Bahadur Sir ALLADI KRISHNASWAMI AYYAR:—"That only illustrates the difficulty of the landholder making an application. If the landlord is unable to make all the ryots parties to the suit, there is the risk. No man can be bound by any decision to which he is not a party. If the landholder is unable to make all people parties to the proceedings, it is of advantage to the ryots, because, every ryot can reopen the proceedings. If you think that it is desirable that each must take up the matter to the civil court, by all means vote for this amendment. That will be the effect of the amendment."

* Diwan Bahadur A. APPADURAI PILLAI:—"Mr. President, there is a little doubt with reference to this section which I wish to be cleared. Section 20 as redrafted in the amending Bill says:

'The Collector may, on the application of the landholder or other person interested, decide any question as to whether any land is or is not of the description mentioned in sub-clauses (a), (b) or (c) of clause (16) of section 3 . . .'

"The lands described in sub-clauses (a), (b) or (c) are those set apart for thrashing floors, cattle-stands, village-sites, etc. It is a very simple matter to decide whether any land is or is not of this description. There is nothing in it which cannot be decided by a Deputy Collector. That being the case, it seems to me that the amendment now moved introduces in a very simple question, unnecessary complications.

[Mr. A. Appadurai Pillai] [4th November 1933]

“ Another point which I would like to mention in this connexion is this: After it is settled whether a particular plot of land comes under sub-clauses (a), (b) or (c), the District Collector steps in to see if that land is no longer of use for the purpose intended. Clause 20-B deals with this. Clause 20-A deals with lanka lands and the House has decided to omit it. Now therefore this 20-B becomes 20-A. According to this, the District Collector steps in and if he finds that the land is no longer utilized for the purpose intended it is taken away from the category of communal lands, unless it can be utilized for some other communal purpose. If it is in the nature of lakhiraj lands not taken into account when the original peshkash was fixed, it would be treated as Government land and assigned for cultivation. If otherwise, it is added to the other lands of the proprietor. The ryots stand to benefit either way. To decide this question, as I stated, the Collector steps in. These questions engage the attention of Revenue officers all the year round. There have been innumerable disputes in zamindaris and other proprietary villages as to whether particular lands set apart for communal purposes years ago are no longer required for those purposes. Take, for instance, abandoned village-sites. On such village-sites no longer used for the purpose intended, either the landholder or the ryot steps in. Threshing floors are sometimes abandoned and new ones selected on account of the belief that the old ones are not auspicious. In the case of cattle-stands also, as the village expands, the old sites situated very near the village stead are abandoned and new ones found. The question as to how these lands should be treated often comes up for decision before Revenue officers. The Bill, as now drafted, requires that the District Collector should decide such questions. From the District Collector's decision, an appeal lies to the District Court. That safeguard seems to be sufficient for the ryot as well as the landholder. The scale is kept even between the landholder and the tenant. In view of this explanation I trust that Diwan Bahadur Muniswami Nayudu Garu would be pleased to withdraw his amendment.”

* Mr. P. PEDDIRAJU:—“ Sir, what my hon. Friend, Mr. Appadurai Pillai, said applies to an order under section 20-B where an appeal lies to the Revenue Board. The amendment proposed has reference to an order under section 20-A. I want to show to the House some inconveniences which are being experienced in cases where orders are passed by the Revenue authorities. In my own district, in a village where the zamindar and an important tenant are enemies, the former made the Revenue authorities say that a particular land is a cremation ground and it was so registered in the record of rights also. When the matter went up to the Board of Revenue they confirmed the original decision and the party had to go to a civil court to get that decision reversed. It must be remembered that this thing happened in regard to a land which was in the name of the concerned party for nearly 60 years. In another case in a zamindari village, where a record of rights was prepared, all the tanks therein and even the road which

4th November 1933] [Mr. P. Peddi Raju]

had been formed by the taluk board some 25 years ago were all recorded as private lands. When these things happen, people naturally lose hope of getting relief. Therefore, I want that where an application is filed under section 20-A and an order is made by the Collector, relief should be provided in the way suggested in the amendment."

* Mr. T. C. SRINIVASA AYYANGAR:—"After my hon. Friend, Mr. Peddiraju, has spoken there is very little for me to add. Sir, the cases that are likely to arise are not confined to the landlords and the tenants. Some cases arise between two sections of ryots themselves. It is proper that, when a question of title either of an individual or of a large body of ryots or a question regarding the character of the land itself is involved, the ultimate decision is left to the civil court, if the aggrieved parties are not satisfied with the summary decision of the Collector."

* Sriman M. G. PATNAIK Mahasayo:—"Mr. President, Sir, there 1 p.m.
is a good deal of misunderstanding as to why this amendment was moved. It is not intended to benefit the ryot or harm the landholder; it is done only to put an end to uncertainties. Supposing that the Collector gives a decision that a particular land is held on service tenure or is tank-bed or some such thing under any of the three clauses, in that case the defeated party can file a suit within six years under section 42 of the Specific Relief Act. It is only a summary remedy now sought to be given, and as it is, the unsuccessful party can file a suit within six years, but all these six years the question of title will be hanging in the air. Therefore, in order to put an end to such uncertainty, there must be a clause of this sort. It is to shorten the period of six years this notice of amendment is given. Of course there are provisions of this kind in some other Acts, for instance, the Survey and Boundaries Act. So there is absolutely no reason for opposition either from the hon. the Revenue Member or from any of the zamindars; for this amendment is not intended to harm the zamindar or benefit the ryot. It was explained on the other side that it is harmful to the ryots. If the hon. the Advocate-General's opinion is accepted, one would think prolonged litigation is not harmful."

Diwan Bahadur Sir ALLADI KRISHNASWAMI AYYAR:—"On a point of order. I never voted for prolonged litigation."

Sriman M. G. PATNAIK Mahasayo:—"I understood the hon. the Advocate-General to mean that if the right to carry on litigation over a long period is put an end to it is harmful to the ryots. That is what it comes to if his argument is analysed. Therefore there should be no objection to this amendment."

* Mr. K. P. RAMAN MENON:—"As far as I can see there is no objection to this amendment. It is pointed out there is an ultimate appeal, that is, an appeal to the District Court against the orders of the Collector."

[Mr. K. P. Raman Menon] [4th November 1933]

“If it is once decided that these matters are matters to be decided by judicial courts, granting for argument's sake that a Collector's Court is a judicial court, his order would amount to a summary order. Suits to set aside such orders are in the ordinary order of things. That is all that is meant by the amendment tabled by Mr. Patnaik. Ultimately if the matter goes before the District Court, why should the District Court be confined to the matters brought before the Collector alone because the District Court is now confined to the evidence brought before the Collector and cannot travel outside it? Whereas if a suit is filed evidence can be let in and all matters connected therewith can be thrashed out to the utmost extent. Therefore it is desirable to accept this amendment. Again, the amendment conduces to the speedy settlement of disputes. As pointed out by Mr. Patnaik, instead of the period extending to six years for institution of suits, now the period is reduced to one year so that the matter can be settled at the earliest possible date.”

The amendment was put and carried.

Clause 11.

Section 20-A.

Diwan Bahadur B. MUNISWAMI NAYUDU:—“I move—

‘Omit the proposed section 20-A and renumber the subsequent sections 20-B and 20-C as 20-A and 20-B.’

“This is only a consequential amendment and may be accepted.”

Mr. P. PEDDIRAJU:—“I second it.”

The amendment was put and carried.

New section 20-B (2), as re-numbered.

* The hon. Sir ARCHIBALD CAMPBELL:—“I beg to move—

‘in line 2 of the new section 20-B (2) as renumbered, for the words “the compensation,” substitute the words “the share, if any, of such cost”.’

“This is merely a drafting amendment intended to bring the language of this section into line with 20-B (1) as renumbered.”

The hon. Diwan Bahadur S. KUMARASWAMI REDDIYAR:—“I second it.”

The amendment was put and carried.

Clause 11, as amended, was put and carried.

Clause 12.

Section 21.

* The hon. the PRESIDENT:—“Clause 12 is for the consideration of the House.”

4th November 1933]

* Diwan Bahadur B. MUNISWAMI NAYUDU:—"Sir, I move—
'for the omission of sub-clause (2) of section 12.'

"Sir, this relates to securing certain rights which have been acquired by persons who are in occupation of tank-bed lands. You will see, Sir, that section 21 as amended provides that 'any person occupying any of the lands mentioned in sub-clauses (a) and (b) of clause 16 of section 3 for any purpose other than that for which the land is so set apart or contrary to the rules framed by the Local Government, may, at any time, within 30 years from the commencement of such occupation be summarily evicted by the Collector,' etc. Then comes the proviso 'Provided that nothing in this section shall apply to lands of the description mentioned in sub-clause (a) of clause 16 of section 3 in respect of which a title has been acquired prior to the first day of July 1932.' So that the section as it stands applies not to lands which are ryoti lands, but more particularly to tank-bed lands. Section 21 applies the penal provision of the Madras Land Encroachment Act, that if tank-bed lands which are communal in the sense that they are necessary for the preservation of the tank, are occupied contrary to the object for which they are set apart, such occupation should not be tolerated. This proviso wants to protect people who on the authority of the landlord have acquired a title, it may be by a grant, by patta or by purchase, or it may be by adverse possession for a period of time. What I submit is that it should not be open to any particular person, even though with the consent or under the authority of the landlord to occupy land which is necessary for the purpose of tank-bed, and that the Collector should see that such occupation is terminated. I think this proviso goes towards curtailing the rights of the general body of wet landholders in the village itself in favour of one or two who encroach on the land or get patta for it with the permission of the landholder. The provisions of the Madras Land Encroachment Act could be put into force only on application to the Collector. If in any particular case the Collector should consider that the occupation is not prejudicial or that it is not objectionable, possibly he would not take action. But if he considers it objectionable, no consideration should be paid to the fact that it has been there for a long time, because occupying land prejudicial to other people should not be tolerated."

Mr. V. P. NARAYANAN NAMBIYAR:—"I second it."

* Mr. T. C. SRINIVASA AYYANGAR:—"Cases of encroachment on tank-beds have frequently come up before courts and conflicting rights set up. Vast extents in the villages have been set apart, particularly in zamindaris where irrigation is by means of rain-fed tanks, for purposes of serving as catchment area and also as bed for storage of water. In dry tracts, I mean the tracts in which rainfall is not very heavy, the tendency on the part of the ryots is to go and cultivate those foreshore lands; because on account of the moisture and also on account of the silt, the tank-bed is more easily cultivated with the

[M. T. C. Srinivasa Ayyangar] [4th November 1933]

prospect of raising an abundant crop. Oftentimes, this cultivation, if allowed, very much endangers the tank in more than one way. When the crops are ripe, and when there is a likelihood of submergence of the crops, the people so cultivating the lands are tempted to cut open the bund somewhere, so that the tank may be drained of the water; thereby the ayacut holders who hold lands under the tank and expect irrigation therefrom suffer. Deeper portion of the tank is liable to being silted up. It is not merely the claim of the cultivators of the bed of the tank and the title of the landholder are involved so as to leave the matter to be arranged among themselves. There is a third party, the cultivators of the wet lands who depend upon the tank, and who rely upon the efficient maintenance of the tank. Conflicts often arise between the wet landholders under the tank and the encroachers on the tank-bed and the landlord's position then is a very difficult one between these two rival parties of ryots. He is bound to maintain it in a very sound condition as per law and usage. Even the landlord himself has to be protected from the encroachment of a large body of ryots on a combined scale. Therefore the question of the right acquired or acquirable, if at all, by the people who encroach and stay on the land can only be of a precarious character. That is subject to the paramount rights which the wet ayacut holders have over the tank and also to the obligation of the landlord to maintain it for the benefit of the wet ayacut holders. The tank-bed cultivation can only be on sufferance or on licence. In these circumstances, the contention that any right of an indefeasible character can be acquired by people who have merely cultivated the tank-bed, can never be recognized, unless any particular portion of the tank-bed is not required for the proper and efficient maintenance of the tank. Therefore the clause requires reconsideration and in my opinion redrafting also so that the conflicting interest of the ryots and the obligations which rest upon the landholder may be reconciled and adequately dealt with."

1-15
P.m.

* Diwan Bahadur Sir ALLADI KRISHNASWAMI AYYAR:—" Mr. President, I want to explain the exact scope of section 21 before the House votes upon it. The original section 21 was confined only to communal lands of a particular description, i.e., threshing floors, cattle-stands, village-sites and other lands situated in any estate which are set apart for the common use of the villagers. It did not take in tank-bunds, irrigation channels and so on because the idea in regard to these things was that the landholder had some kind of proprietary right and therefore they did not come within the import of section 20. As a ground of policy, tank-bunds, irrigation channels, etc., are also brought under section 20. To that extent there is amplification of the old section 20. The present section 20 reads thus—

'20. (1) (a) Subject to such rules as the local Government may prescribe in this behalf the District Collector may by order in writing authorize any land or any portion of any land which is referred to in sub-clauses (a) or (b) of clause (16) of section 3 and which is no longer required for its original purpose—

(i) to be used for any other specified communal purpose, etc.

4th November 1933] [Sir Alladi Krishnaswami Ayyar]

“ Then having provided that the only question would be what remedies which were available in respect of lands other than tank-bunds and beds, etc., are to be extended to tank-beds and bunds. It was felt that those remedies had to be extended. Then the difficulty that was experienced was: is it right or a wise policy that in respect of those properties where third parties might have grown up—it might be due to the act of the landowners or the tacit innocence of the ryots—to divest them of the rights vested in them. The question is whether, rights in favour of third parties having been created, it is right or a wise policy to divert those lands for other purposes. Therefore while the new section 20 was extended with the object of bringing tank-bunds and irrigation channels practically under the head of communal lands, we should extend those remedies to these lands also. It was felt by the Committee that it might not be right to disturb the rights of third parties which have grown up. That is why it is stated in section 20 (1) ‘ subject to such rules as the Local Government may prescribe, etc., the Collector may by order in writing authorize any land or any portion of any land which is set apart for any of the purposes referred to in sub-clauses (a) or (b), clause (16) of section.’ In the case of those new lands which have been brought under section 20 in respect of which a title has been acquired prior to 1st day of July 1920 the only question before the House is whether the rights of third parties which have grown up before the tank-bunds and irrigation channels are brought in the same category as other lands should be disturbed or whether any remedies are to be extended to them or not. That is, what exactly is the tank-bed or bund itself is a doubtful question. A third party might have been there on the land for 20 or 30 years. No doubt you want to prevent the future landowners from assigning these lands and also enable the summary remedy being availed of in the manner provided in the section, side by side making the summary remedy available to these parties also. The question is whether it is right to disturb the rights of third parties which have grown up. Mr. Muniswami Nayudu for this purpose has brought forward an amendment. The intention of section 20 is to provide a particular remedy. You want at the same time not to disturb the rights of third parties. The object of the amendment is to extend the scope of section 21 as it stood originally which was not to disturb the rights of third parties but merely to provide a remedy for trespass committed in respect of tank-bunds, threshing floors, etc. Now the only question before the House is whether it is right or not right to disturb the rights of third parties. If the House is for voting on this amendment on grounds of high policy and say ‘ we want to disturb even these rights,’ it is another matter. I may remind the House that later on a provision is made for increasing the tank-bed. Provision is also made for compulsory eviction. Therefore it is for the House to consider whether they should extend those remedies to these lands also. I merely wanted to explain the import and the genesis of this clause.”

The hon. Sir ARCHIBALD CAMPBELL:—“ I am prepared to accept this amendment.”

[4th November 1933]

The amendment was put and carried.

Clause 12, as amended, and clause 12-A were put and carried.

Clauses 13, 14 and 15 were put and carried.

Clause 16.

Section 32.

* Diwan Bahadur B. MUNISWAMI NAYUDU:—"Sir, I beg to move—
'in the proposed sub-section (2) omit the figures and words "sub-clauses (i), (ii), (iii) and (iv) of".'

"Sir, in the Select Committee a new clause was put in as clause (2) to section 32. Section 32 provides for enhancement of rent by landholder on the ground that improvement has been effected and therefore the tenant could afford to pay a higher rent. There are certain facts which are laid down in section 32 and which the Collectors shall have regard to in fixing the enhancement. The following considerations are given under clause (b) of section 32:—

- '(i) the increase in the productive powers of the land caused or likely to be caused by the improvement,
- (ii) the cost of making the improvement,
- (iii) the probable annual cost of maintenance of the improvement,
- (iv) the cost of preparation and cultivation required for utilizing the improvement, and
- (v) the existing rent and the ability of the land to bear the enhancement.'

"So that in a suit to enhance the rent the Collector is required to take into consideration these five factors before he finally levies the higher rent. The fifth factor relates to the ability of the land to bear a higher rent. Under the new provision made in section 32 the landholder is given permission to make improvements and he is entitled to raise the rent on that ground. There are provisions for the purpose of seeing that such improvement is made with the previous sanction of the Collector and that the Collector should fix a proper rent taking into consideration some one of factors that I have enumerated and not the last factor, i.e., the existing rent and the ability of the land to pay. Sir, this will be a great hardship if the landowner goes on making improvements and if in spite of these improvements the land could not bear a higher rent. We have received representations from the Tanjore Mirasidars that the Mettur project does not give them all the benefits and that the rent that is going to be charged is not one that the ryot could afford to pay. Therefore the Collector has to take into consideration not merely the facts mentioned in clauses (i), (ii), (iii), (iv) but also the fact mentioned in clause (v), viz., the ability of the land to pay the enhanced rent. I am only giving all these things to show that although the land may not be able to bear a higher rent and the ryot is not able to pay a higher rent, the Collector may levy a higher

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rent. I therefore move my amendment, so that under section 32 the Collector will take into consideration all the five factors mentioned therein."

Mr. V. P. NARAYANAN NAMBIYAR:—"I second the amendment."

The amendment was put and carried.

Clause 16, as amended, was put and carried.

Clauses 17 and 18 were put and carried.

Clause 19.

Section 37.

The hon. Sir ARCHIBALD CAMPBELL:—"I beg to move that the following be substituted for section 37:—

'37. An application for enhancement of rent on the ground of a rise in prices shall not be entertained if, within the twenty years next preceding the application, the rent has been enhanced or reduced on the ground of a rise or fall in prices or commuted or a suit or an application for enhancement or reduction of rent on the ground of a rise or fall in prices has been dismissed on the merits.'

"Sir, this is purely a drafting amendment. The language of section 37 (2) which is analogous to section 37 is however not identical with it. Reference to pending suits is unnecessary as pending suits are sufficiently protected by clause 129 of the Bill which saves all legal proceedings pending at the commencement of the Act in general terms. There is no intention to prevent successive applications for enhancement under Order XXIII, Rule 1, of the Civil Procedure Code. Sub-section (2) is therefore unnecessary. Section 37 (1) as it stands at present would not bar applications for enhancement of rent or reduction where a reduction has been decreed or ordered within 20 years preceding the application for enhancement. This defect which is found in the existing Act has to be cured. The new section 37 suggested by the amendment gives effect to the points mentioned above."

The hon. Diwan Bahadur S. KUMARASWAMI REDDIYAR:—"I second it."

The amendment was put and carried.

Clause 19, as amended, was put and carried.

At this stage the House rose for lunch.

After Lunch (2-30 p.m.)

Clause 9.

Section 13 (3).

* The hon. the PRESIDENT:—"The House will now proceed to take up amendment No. 79 under clause 9."

Diwan Bahadur B. MUNISWAMI NAYUDU:—"May I request you to take it up a little later?"

**582 A BILL FURTHER TO AMEND THE MADRAS ESTATES LAND ACT, 1908,
FOR CERTAIN PURPOSES (BILL NO. 12 OF 1931)**

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* The hon. Sir ARCHIBALD CAMPBELL:—" Shall we take it on Monday?"

* The hon. the PRESIDENT:—" Yes."

Clause 20.

* The hon. the PRESIDENT:—" Amendments Nos. ^a 111, 112 and 112-A are outside the scope of the Bill.

" Clause 20 is for the vote of the House."

Clause 20 was put and carried.

Clause 21.

Section 39.

* The hon. Sir ARCHIBALD CAMPBELL:—" Mr. President, I beg to move—

that for section 39, the following section be substituted:—

" 39. An application for reduction of rent on the ground of a fall in prices shall not be entertained if, within the twenty years next preceding the application, the rent has been reduced or enhanced on the ground of a fall or rise in prices, or a suit or an application for reduction or enhancement of rent on the ground of a fall or rise in prices has been dismissed on the merits."

^a Clause 20.

Section 38.

Sub-clause (ii).

Mr. C. R. PARTHASARATHI AYYANGAR,—

Mr. SAMI VENKATACHALAM CHETTI:—

III. Renumber sub-clause (ii) as sub-clause (iii) and insert the following as sub-clause (ii):—

" (ii) omit clause (c) of sub-section (1) of section 38 of the Act."

Section 38 (1).

Section 38 (1). New sub-clause (d).

Mr. ABDUL HAMEED KHAN,—

Mr. SAMI VENKATACHALAM CHETTI:—

112 In section 38 (1) of the said Act, add the following new sub-clause:—

" (d) or the productive powers of the land has deteriorated consequent on the neglect of irrigation works."

Mr. SAMI VENKATACHALAM CHETTI:—

112-A To section 38 of the said Act, add the following paragraph:—

" Notwithstanding anything contained in this section, when the Collector finds that the irrigation work is in such a state of disrepair as to cause a material diminution of the usual supply of water, and consequently a substantial failure of the crop dependent on such supply, he may direct the remission of the whole or part of the rent payable on the land which is dependent on the irrigation work, until such time as the irrigation work is completely repaired and the usual supply of water is restored."

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"Sir, this amendment is moved for the same reasons as those for which I moved an amendment to section 37. Section 39 as it stands at present does not debar any application for enhancement of rent where an enhancement has been ordered or decreed within twenty years preceding the application. This defect which is found in the existing Act has to be cured. There is no necessity to have the proviso to section 39 which can apply only to pending suits and pending suits are protected by clause 129 of the Bill."

The hon. Diwan Bahadur S. KUMARASWAMI REDDIYAR:—"I second it."

* Diwan Bahadur B. MUNISWAMI NAYUDU:—"I oppose the amendment. Supposing an application was filed by a landlord for enhancement of rent on the ground of rise in prices and that application was dismissed, then it would prevent that landlord from filing another application for twenty years for enhancement of rent. On the other hand, suppose a suit or an application as it will be the case hereafter, for an enhancement of rent on the ground of rise in prices has been decreed and supposing after ten years there is a phenomenal fall in prices as is the case to-day, the amendment now moved would prevent the tenant from going to court and asking for a reduction of the enhancement. I can understand if a tenant has chosen to go to the court and asked for a reduction of rent on the ground of rise in prices, he should be prevented for another 20 years from going again to the court and asking for a reduction. But he should not be prevented because the landlord has gone to the court and asked for enhancement within the last twenty years. What this amendment does is: it prevents a tenant from filing an application for reduction of rent not only when he has himself filed an application for reduction within the preceding twenty years, but also when the landlord has filed an application within the last twenty years. That will be a hardship. The clause as it stands prevents the tenant from filing a similar application for reduction of rent, if he has filed an application for reduction on the ground of fall in prices within the last twenty years and that application has been dismissed on its merits. Therefore, the amendment goes much farther than the original clause and it will be a great hardship."

* Mr. P. PEDDIRAJU:—"Sir, I also oppose the amendment for the same reasons that have been put forward by Mr. Muniswami Nayudu. The amendment makes the restriction more extensive than the original clause and this extension would surely work a great hardship on the tenants. Let us take some instances. Recently there have been some applications before the courts for enhancing the rent and they were dismissed. Now according to the amendment now proposed, the ryots concerned will have no right for another twenty years to go before the court and ask for any reduction of rent on the ground of fall in prices. Now, Sir, the complaint all over the Presidency both in the ryotwari tracts and in the zamindari tracts is that the ryots are entitled to some reduction of rent on account of the phenomenal fall in prices. But if by this amendment they are prevented from asking for it, I do not know

[Mr. P. Peddiraju] [4th November 1933]

whether anybody will as a matter of grace grant the reduction. I do not know, whether when the hon. the Revenue Member says that this is merely a drafting amendment, he really intends that the ryots should be so debarred. I do not think it will be so and therefore I request him to consider this aspect of the question and withdraw the amendment."

* Sriman M. G. PATNAIK Mahasaya:—"Sir, I also beg to oppose the amendment. Even the Government which has the prerogative of taking rent would be exceeding its prerogative by taking more than the value of the whole produce of the land, which will be the case when there is a phenomenal fall in prices and the produce of the land is not even worth the rent payable on it. When such is the case, how can the ryot go on paying more than the produce of the land for a period of twenty years? Such a provision will be very undesirable and even revolutionary. The ryots should not be compelled to pay such excessively high rent, simply because it has been once fixed. There must be some provision for reduction of rent when there is an abnormal fall in prices. If the produce is worth as much as the rent, then the Government may take their rent up to that extent, but here supposing the produce is not worth so much, how can a ryot or anybody for the matter of that pay that amount? Therefore, if the present economic conditions continue for long, I think that a provision like this will be most undesirable."

MR. BASHEER AHMED SAYEED:—"Sir, the attempt of the hon. the Revenue Member seems to be a sudden one. There seems to be no history behind this amendment. I have searched in vain for the history of this amendment from 1922 onwards and I find there is practically nothing in the tabulated statement which has been given to us. I do not know why the hon. the Revenue Member wants to have this amendment moved. In fact, even in the Bill itself the clause concerns itself only with applications for enhancement. But now the hon. the Revenue Member wants to make it apply to applications for reduction. That would mean that the clause would give an advantage to the zamindars as against the ryots. If it was the original intention of the Government to give the benefit only to the ryot, what has transpired in the interval to go back upon it and see that advantage is given to the zamindar? No case seems to have been made out in the speech of the hon. the Revenue Member. I should consider, Sir, that section 39, as reported upon by the Select Committee is more than enough. I do not think there are cases to justify the new amendment proposed by the Government. It will be a great hardship to the ryot if this amendment is going to be passed. It will debar him even in just cases to go to a court and apply for reduction, simply because on a frivolous issue or for frivolous reasons a landholder might have filed a suit twenty years before. Therefore I oppose this amendment which will debar the ryot from seeking any remedy even in just cases."

* The hon. Sir ARCHIBALD CAMPBELL:—"I beg to withdraw the amendment."

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The amendment was, by leave, withdrawn.

* The hon. Sir ARCHIBALD CAMPBELL:—"Sir, I move the following amendment:—

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'In line 5 of the new section for the words "under the same sub-section" substitute the words "under the same clause".'

"This is a drafting amendment."

The hon. Diwan Bahadur S. KUMARASWAMI REDDIYAR:—"I second it."

The amendment was put and carried.

Clause 21, as amended, was put and carried.

Clause 22.

Section 40.

* The hon. Sir ARCHIBALD CAMPBELL:—"Sir, I beg to move the following amendment:—

'In new sub-section (1), after the words "or at rates varying with the crop" insert the words "whether in cash or in kind".'

"This amendment is necessary as rent is paid sometimes in cash and sometimes in kind."

The hon. Diwan Bahadur S. KUMARASWAMI REDDIYAR:—"I second it."

The amendment was put and carried.

* The hon. Sir ARCHIBALD CAMPBELL:—"Sir, I move the following amendment:—

'For new sub-section (2) of section 40, substitute the following sub-section, namely:—

"(2) On such application, the Collector shall pass an order declaring the sum to be paid as money rent in lieu of rent in kind or otherwise. The commutation shall take effect from the beginning of the revenue year next after the date of such order".'

"This makes it compulsory for the Collector to pass an order of commutation. It does not leave it to his discretion."

The hon. Diwan Bahadur S. KUMARASWAMI REDDIYAR:—"I second it."

The amendment was put and carried.

New sub-clause (iii).

* The hon. Sir ARCHIBALD CAMPBELL:—"Sir, I beg to move—

'after sub-clause (ii), insert the following sub-clause, namely:—

"and (iii) In clause (b) of the same sub-section, after the words 'neighbouring villages' the words 'or where there are none such, in the villages of a neighbouring taluk' shall be inserted".'

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"It is made clear what shall be considered in making this calculation."

The hon. Diwan Bahadur S. KUMARASWAMI REDDIYAR:—"I second it."

The amendment was put and carried.

Clause 22, as amended, was put and carried.

Clause 23.

Section 42.

Mr. SAMI VENKATACHALAM CHETTI:—"Sir, I move the following amendment:—

'In section 42 of the Act, substitute the following for the present sub-section (2):—

"Where there is no agreement in writing for the alteration of the rent with area, no such alteration shall be made or allowed except under the orders of the Collector upon application made to him for the purpose by the landholder or the ryot concerned."

Mr. ABDUL HAMEED KHAN:—"I second it."

* The hon. Sir ARCHIBALD CAMPBELL:—"I do not quite follow the object of the amendment. Will the hon. Member kindly explain?"

Mr. SAMI VENKATACHALAM CHETTI:—"The present section reads as follows:—

'Provided that in cases of dispute, no alteration of the amount of rent under this section shall be allowed except under the order of the Collector upon application made to him for that purpose by the landholder or the ryot concerned.'

"For this provision I desire that the amendment I have given notice of and moved, should be substituted. Unless an application is made either by the landholder or the ryot, there should be no variation of rent."

Diwan Bahadur B. MUNISWAMI NAYUDU:—"Sir, that has already been provided for in sub-clause (2)."

Mr. SAMI VENKATACHALAM CHETTI:—"I beg leave to withdraw."

The amendment was, by leave, withdrawn.

Clauses 23 and 24.

* The hon. the PRESIDENT:—"There are no amendments to clause

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24. So, clauses 23 and 24 are now for the vote of the House."

Clauses 23 and 24 were put and carried.

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Clause 25.

Section 44.

Sub-section (1).

* Diwan Bahadur B. MUNISWAMI NAYUDU:—"I move, Sir, the amendment standing in my name, viz.:

'In line 2 after the words "being made" insert the words "or in proceedings in which it is claimed to enforce an increase or decrease of rent as provided in sub-section (3) of section 42".'

The object of my amendment is this: Section 42 as it stands provides that when there is a dispute as to whether there is an excess area or a decrease in area, no alterations shall be made except with the previous sanction of the Collector upon application made to him. The question arises as to whether even in cases where there is an agreement to vary, there should be an application to the Collector and whether without a reference by application to the Collector, the question could not be raised in a suit or proceedings for recovery of rent. The High Court held in some cases that recourse to sub-section (2) may not be necessary; but anyhow, to make the point clear, sub-section (3) has now been added to the section and passed. It says:

* * * where by agreement in writing the rent is fixed in proportion to the area or where by agreement in writing the rent is fixed on the basis of an assumed area and the agreement provides for the alteration of the rent when the actual area is found to vary from the assumed area, it shall be lawful for the landholder or the ryot to enforce an increase or decrease of the rent, as the case may be . . .

Section 42 provides that in cases of dispute there should be an application, so that the Collector may look into the matter; section 44 (2) lays down, when such an application is made, the various points to be taken into consideration in determining the area for which rent has been previously paid and the amount to be added or deducted. Those considerations are:

'(a) the origin and conditions of the occupancy, for instance, whether the rent was a consolidated rent for the entire holding;

'(b) any reason which may have led the landholder to permit the ryot to hold the additional land whether in consideration of an addition to his total rent or otherwise;

'(c) any reason which may have led the ryot to consent to hold a reduced area without a corresponding reduction in his rent;'
and also

'(d) the length of the measure used or in local use at the time of the origin of the occupancy as compared with that used or in local use at the time of the application.'

When an allegation is made that there is a decrease or increase in the area, all that we have tried to do by the addition of sub-section (3) to section 42, is not to force the landholder to resort to an application to the Collector, but to enable him to raise this question in other proceedings; say in a suit for rent, so that the court may decide the question.

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once for all and give him an additional rent, if he is entitled to it. I only want that the various considerations mentioned in sub-section (2) of section 44 should be considered whenever the question arises, whether it be by application under sub-section (2) or by proceedings in which such a claim can be made under the new sub-section (3). Therefore, I introduce the amendment:

‘or in proceedings in which it is claimed to enforce an increase or decrease of rent as provided in sub-section (3) of section 42.’

I am simply following up the provision in new sub-section (3) of section 42. According to the amended form, you will be allowing the Collector even in cases where there is an agreement, to consider, before giving effect to the contention, the various points mentioned in section 44 (2). If we do not make this amendment now, in cases where there is an agreement, there is no chance of the landlord or tenant taking the objection that there are other considerations to be taken into account. For this reason, I move my amendment.”

Mr. P. PEDDIRAJU seconded the amendment.

The amendment was put and carried.

* The hon. the PRESIDENT:—“Amendment No. 135^a is not relevant.

“There are no amendments to clauses 26 and 27. I shall therefore put clause 25 as amended and clauses 26 and 27 to the vote of the House.”

Clause 25 as amended and clauses 26 and 27 were put and carried.

Clause 28.

Mr. SAMI VENKATACHALAM CHETTI:—‘I beg to move that—

‘In clause 28 for the first three lines substitute the following:—

“In section 50 of the said Act,”

“(i) in sub-section (1), the words ‘and also so far as may be to ryots holding old waste under landholder otherwise than under a lease in writing’ shall be omitted; and

(ii) after sub-section (2), the following sub-section shall be added, namely:—”

It is consequential, Sir.”

Mr. P. V. KRISHNAYYA CHOUDARI seconded the motion.

The hon. Sir ARCHIBALD CAMPBELL:—“I accept the amendment.”

* The hon. Sir ARCHIBALD CAMPBELL:—“I accept the amendment.”

Clause 28, as amended, was put and carried.

^aAfter clause (d) of sub-section (2) of section 44 of the said Act, insert the following:—‘Explanation.—In cases where there is discovery of uniform excess in areas in the holdings of the majority of the ryots in a village or a general increase in area on a survey or resurvey of the holdings in a village, it shall be presumed that the rent is not in such cases, fixed in proportion to the area and the excess is due to difference in measure.’

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Clause 29.

Section 51.

* The hon. the PRESIDENT:—"Amendment No. 138 is not relevant."

* Diwan Bahadur B. MUNISWAMI NAYUDU:—"May I make a submission, Sir, in that connexion? The amendment runs: In section 51 'After the words "by a share of the produce" add the words "the extent of remission allowable for unfavourable seasons, and the conditions by which the landholder agrees to maintain and repair the irrigation and drainage works".'

You will see, Sir, in section 51 there are certain amendments newly introduced. The section itself relates to the contents of pattas and muchilikas. It says—

'The patta shall contain the names of the parties; the local description and extent of the land; the rate or amount and nature of the rent payable thereon, according as it may be payable in money, in kind or by a share of the produce; any sum payable by the ryot on account of pasturage fees or fishery rents; any local tax, cess or fee or charge payable with the rent according to law or usage having the force of law . . . etc.'

So that, to the original section 51 one more item that—

'any sum payable by the ryot on account of pasturage fees or fishery rents' is added. What my friend wants by his amendment is to add other items. It is a case in which the section itself has been amended by the Bill."

* The hon. Sir ARCHIBALD CAMPBELL:—"Mr. President, Sir, it seems to me that this amendment raises an entirely new point connected with the question of remission. I think it is not quite relevant here."

Mr. SAMI VENKATACHALAM CHETTI:—"I beg to submit that it does not raise a new point; it only mentions a point which has been omitted—either by oversight or by design, it is entirely for the framers to say. There are certain points mentioned here, various methods by which the relationship between landlord and tenant should be shown in the patta. The hon. the Revenue Member has taken the opportunity of this Bill to put in an additional item which even if it is not mentioned here would not affect the position, since the tenant would continue to pay to the landholder 'any sum payable.' That being so, I do not see why the eligibility of the tenant to get remission from the landholder under certain circumstances should not find a place here,—that the tenant is or is not eligible for any reduction in rent on account of unfavourable seasons or other causes. Whatever be the merits of the question, I do not think, Sir, that the hon. the Revenue Member is right in saying that this is a new point."

* The hon. the PRESIDENT:—"It is not merely a question of merit. I think it is completely outside the scope of the subject-matter which has been raised in sub-clause (i) of clause 29 of the Bill. I think the amendment is not relevant."

Mr. SAMI VENKATACHALAM CHETTI:—"You propose to consider it later, Sir?"

* The hon. the PRESIDENT:—"No."

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MR. SAMI VENKATACHALAM CHETTI:—"You have ruled it out?"

* The hon. the PRESIDENT:—"Yes."

* The hon. the PRESIDENT:—"Amendment No. 139^b is not relevant."

"Clauses 29 and 30 are now for the vote of the House."

Clauses 29 and 30 were put and carried.

Clause 31.

Section 54.

MR. SAMI VENKATACHALAM CHETTI:—"Sir, I move—

"In section 54 of the Act, after the words "sub-section (2) of section 78" add the words "and if not served in person by service through post"."

The reason for this amendment is quite obvious. It is alleged by the landholders that a mere statement that the notice was served upon the party at the place of his residence is good service, though on behalf of the ryots it is alleged that in several cases notices are not served; and the statement of the landholder that they are served is far from a correct statement. Therefore it is necessary that the notice must be sent through post. I would prefer 'registered post,' but 'post' includes 'registered post' also. I do not think there will be any difficulty on the part of the landholders to accept this amendment."

* Diwan Bahadur B. MUNISWAMI NAYUDU:—"Sir, I second this amendment. This section 54 is a very important section. Section 52 relates to pattas and muchilikas and sub-section (3) thereof says that—

"Pattas and muchilikas accepted, exchanged or decreed for any revenue year shall remain in force until the commencement of the revenue year for which fresh pattas and muchilikas are accepted, exchanged or decreed."

and there is a later provision which says that steps for sale of holdings can be taken only when a patta has been tendered or when a patta has been accepted or when it is in force. The tender of a patta is an essential preliminary to those steps being taken under the Act. It is therefore necessary, Sir, that the tender should be made in a manner that would be most satisfactory from the point of view of the ryot. It must either be served to him in person, or if it could not be so served in person, it should at least be sent to him by post, so that he can be sure of a patta being tendered to him or given to him. Section 78 (2) as it now stands, merely says:—

"The demand . . . shall be served upon the defaulter by delivering a copy to him or to some adult male member of his family at his usual place of

^bAdd the following sub-section after sub-section (3) of section 52 of the Act:—

"(4) Where a patta or muchilika has continued in force for more revenue years than one the tender of a fresh patta will cancel the continuing patta from the revenue year next succeeding that in which it is tendered and where it is unaccepted it will have to be enforced subject to sections 56, 57 and 58 of the Act."

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abode provided that it is in the neighbourhood of the land to which the distress refers or to his authorized agent, or when such service cannot be effected, by affixing a copy of the notice on some conspicuous part of the land to which it refers.

So that, if the defaulter—it may be that he is employed elsewhere or lives elsewhere—is not in that village, the demand is to be affixed to the land.' There is no way of knowing that it is tendered to him. There may be many people who for various reasons may live outside the village. Therefore, apart from the steps that are taken in the way of trying to have it delivered to him at the place where the land is situate, steps should also be taken to have it delivered at the place where he lives and where the landholder knows that he resides. This would prevent allegations on the part of the landholder that he has tendered the patta and counter-allegations on the part of the ryot that no such tender was made. The landlord would have done his duty if he posted it to the address of the ryot. He cannot do anything more. If the ryot lives in the same place, the affixture may serve some purpose. But if he lives somewhere else, this affixture will not serve any purpose at all. And if the tender is not effected, the person cannot be made to suffer. You will see, Sir, that in the amending Bill itself in other sections similar steps have been provided for, to make the ryot aware of these proceedings by sending notices through post. You will find in the first instance that even in this clause there is a new provision to give information of service of patta to the ryot to the landholder by post. And this is introduced for the first time. Section 95 (3) as proposed to be amended in the Bill provides for communicating the order of sale to the defaulter by post and to the cultivator or owner. Similarly under section 117 the selling officer is directed to send a copy of the order to the defaulter by post. In section 112 also with regard to distraint proceedings when you bring the land to sale, a copy of the notice is directed to be sent to the defaulter by post. So in the amendment steps have been taken to see that the defaulter is given due notice of the various proceedings either when movable property is being distrained, or when movable property is brought to sale, or when the sale itself is actually being held. I hope hon. Members here will realize our difficulties in the matter of service of notice. So far as the section is concerned, the notice is given only to the defaulter. 'Defaulter' has been defined by the High Court as a person in whose name the land is registered in the zamindar's accounts and who fails to pay the rent. The result is that patta may stand in the name of one man but there may be other people who are entitled to it. And none of them may know anything about the tender or otherwise, if only affixture is provided for. When the land is sold, all other interests are practically gone because rent is the first charge. So, when the person is residing in the village it is all right. If he is not present in the village but resides elsewhere, in addition to affixing the notice on the land, you also send it by post. As to whether it should be through registered post or not it does not matter. We do not want to see that it is served only by registered post. We only want that it should be sent by post. And having regard to the provisions in the subsequent sections which

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I mentioned, the intention is clear. Just as there is a provision in other cases for sending it by post in the case of a defaulter, in regard to tender of pattas also notice may be sent through post to the person concerned. For these reasons I second this amendment."

The hon. the RAJA OF BOBBILI:—"Mr. President, Sir, in regard to this matter I have some doubts, which I wish to clear. I have no objection as far as the issue of notice by post is concerned. But what has not been made clear by both the Mover and the Seconder is as to what is to be done in cases where the addressee is not known or the address is not known. Unless the notice sent by post is actually received, does it mean that the patta is tendered, or is it an additional precaution?"

* Diwan Bahadur B. MUNISWAMI NAYUDU:—"In regard to this notice by post, you have got only to post it. The question of receipt can be left to the Postal Department and the presumption is that the letter reaches the person to whom it is addressed, when once it is posted."

The hon. Sir ARCHIBALD CAMPBELL:—"I think, Sir, the point raised requires consideration. The difficulty is about absentee ryots. Hon. Members would like to know whether an order or notice addressed to an absentee pattadar or ryot by post may be regarded as due service. Otherwise the processes in relation to the land will have to be held over until the addressee or absentee receives the notice. It would also add a considerable amount of work, I think. Also as a matter of drafting, it appears to be perhaps better that the reference to sub-section (2) of section 78 is omitted, because I understand that the patta is to be tendered either in person on the ryot or on his agent or by post."

* Sriman M. G. PATNAIK Mahasaya:—"Mr. President, Sir, I wish to say a word or two on this amendment. The hon. the Revenue Member said that it would be difficult for the zamindars to know or to have a list of addresses of absentee ryots. I think it is absolutely necessary for the landholder who takes any proceedings to recover his rent to know whether a man is alive or not in the first instance. He cannot just affix a notice on the land and even if the man is dead say that it should be effective against him because it is legal affixture. So, the landholder will have to know the addresses of ryots. It will be absolutely necessary for him to know whether the ryot is alive or not. If he has to know that the man is alive, it will be easy for him to ascertain his address. Therefore that duty is always cast upon the landholder. And the hon. the Raja of Bobbili asked whether it is necessary to know the correct address. Yes, it is necessary. Otherwise the posting is of no use. It may be posted to a place where the man does not reside at all. So unless the correct address is known, the postal service is of no use. But when the letter is posted to the correct address, the presumption is that the addressee received the communication."

* Diwan Bahadur A. APPADURAI PILLAI:—"Mr. President, Sir, there is one important point which I would like to bring to the notice

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of the House, and that is, the postal service is not safe. It is not safe to send a patta by post. Patta is an important document. The exchange of patta and muchilika is a condition precedent to any action that may be taken for the recovery of rent. My hon. Friend Diwan Bahadur Muniswami Nayudu Garu referred to section 112 as an example of notices being sent by post. I must say a notice is different from a patta. Personally, we may not feel any difficulty about the receipt of communications through the post. But knowing as we do the state of things in rural parts, how letters are delivered by village postman, one cannot be sure that documents sent through post would reach the addressees intact. In the interests of the relationship between the landlord and tenant it seems desirable to take steps as far as possible to guard against any complaint that the patta sent has not been received. It is provided by the section that the patta should be lodged in the Collector's office and the Collector takes responsibility for its transmission. Transmission by post need not therefore be insisted upon."

* Mr. P. PEDDIRAJU:—"Mr. President, Sir, I am sorry my friend, Mr. Appadurai Pillai, has taken Mr. Muniswami Nayudu to task for saying that the notice should be sent through post. The ordinary procedure now laid down is to serve it on the person concerned if he is found or to affix it on the land itself if he is not found. I do not know if sending by post is more dangerous than throwing it on the field when everybody is absent from the field. The only difficulty expressed by the hon. the Revenue Member seems to me to be whether service means actual receipt or not. Of course, the hon. the Revenue Member may put in a proper amendment for it if necessary. All that my hon. Friend, Mr. Muniswami Nayudu, asks is that it should be at least sent by post. A proper amendment to that effect may be brought forward later on at the third reading. So, I suggest that if this amendment is acceptable to the Government and the hon. the Raja of Bobbili it may be passed now."

The hon. the RAJA OF BOBBILI:—"I am afraid, Sir, service by post may not constitute sufficient evidence. I have no objection but whose is the responsibility of seeing whether it reaches the addressee at all or not?"

* The hon. Sir ARCHIBALD CAMPBELL:—"May I suggest that this amendment may be postponed for consideration to Monday next?"

Mr. SAMI VENKATACHALAM CHETTI:—"The spirit of the amendment may be accepted. If it is intended to safeguard the responsibility of the landholder, a proper amendment may be brought forward at the third reading."

* The hon. Sir ARCHIBALD CAMPBELL:—"I also object to the retention of the words and figures 'sub-section (2) of section 78.' I think this amendment may conveniently be considered on Monday when some connected provisions also will come up for discussion."

The consideration of the amendment was, with the permission of the House, postponed to Monday, the 6th November 1933.

Clauses 32, 33, 34, 35, 36 and 37 were then put and carried.

Clauses 38, 39, 40 and 41 were put and carried.

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Clause 42.

Section 73.

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Mr. ABDUL HAMEED KHAN:—"I move—

'In section 73, sub-section (3), substitute the words "week's intimation" for the words "reasonable intimation."'

Mr. SAMI VENKATACHALAM CHETTI:—"I second it."

* The hon. Sir ARCHIBALD CAMPBELL:—"There is no clause 42 in the Bill."

Mr. P. PEDDIRAJU:—"In the original Bill, the Government themselves have said ten days' notice. The whole section is omitted. The omission also is now under the consideration of the House. My friend is now satisfied with a week's notice."

Mr. SAMI VENKATACHALAM CHETTI:—"We have agreed to withdraw it."

The amendment was, by leave, withdrawn.

Clause 42 was put and carried.

Clause 44.

New section 75 (1).

* The hon. Sir ARCHIBALD CAMPBELL:—"I move—

'In line 4 of sub-section (1), for the words "issue notice to the parties" substitute the words "issue notice to the applicant and to the opposite party."'

"Sub-section (20) of section 75 refers to visiting the place. It will not be clear. I, therefore, propose this drafting change."

The hon. Diwan Bahadur Sir M. KRISHNAN NAYAR:—"I second it."

The amendment was put and carried.

Section 75 (8) (b).

* Sriman M. G. PATNAIK Mahasayo:—"I move—

'In clause 44, section 75 (8) (b), after the words "the Collector upholds the objection" insert the words "or finds that the relationship of landlord and ryot is not beyond dispute."'

The section runs like this: If an objection is raised that the rent is not payable by division or appraisement, or that no rent is payable, and the Collector upholds the objection, he shall set aside the award.

"The implication is here that very often the relationship between the landlord and the tenant is not admitted. In such cases also the objection may be upheld. As it is by some straining the clause may be

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made to cover such cases; 'or that no rent is payable' may be said to cover such cases. But it will be clear to state that if there is any dispute as to the relationship of landlord and tenant; so the clause proposed may be inserted. The amendment is not a radical one, is non-controversial and therefore may be accepted."

Mr. ABDUL HAMEED KHAN:—"I second it."

* The hon. Sir ARCHIBALD CAMPBELL:—"Mr. President, Sir, I do not think this amendment is necessary. A danger lies in this; the mere fact that the tenant says that the relationship does not exist may be taken as an excuse by the Collector to set aside the award. It seems to me if there is a dispute it is desirable that it should be settled as soon as possible."

* Diwan Bahadur B. MUNISWAMI NAYUDU:—"I thought the hon. Member will make the objection clear. Mr. Patnaik wanted to show that besides the objections mentioned in the clause, there is still a third objection going to the root of the question whether he is the landlord and I am his tenant. The words 'no rent is payable' might very well cover the objection that the man is not the landlord and I am not his tenant. If the Member says that such an objection cannot and ought not to be taken, it is only giving sanction to a person to take proceedings who is not a landlord."

* The hon. Sir ARCHIBALD CAMPBELL:—"If there is no relationship of landlord and tenant, then no rent is payable."

* Diwan Bahadur B. MUNISWAMI NAYUDU:—"What Mr. Patnaik wants the Collector to do is this. If the landlord makes out a *primā facie* title, he can go forward. If he does not make out a *primā facie* title, the landholder should not be permitted to harass the tenant."

* Rao Bahadur Sir A. P. PATRO:—"It is a very mischievous amendment that is sought to be introduced. If the Government do not accept it, by all means well and good. If the Government accept it, I have to raise an objection to the amendment. What happens here is if an objection is offered that rent is not payable either by division or by appraisement or no rent is payable and the Collector upholds the objection, he shall set aside the award. In the first place, an application is made for an appraisement and when that application is made, an officer is appointed who issues notice to the parties. After the notice is given to the party, assessors are selected. They go to the field and then pass their award after individually seeing the fields as to what extent the crop is raised. Then, a further opportunity is given to both parties to file objections to the award. The whole procedure is intended to help the landlord and tenant so that there can be no difficulty of the zamindars' appraisers being partial. Then it goes to the Government officer who ultimately becomes president of the assessors; the whole object is to facilitate the work. If the tenant is not liable to pay a share or appraisement, then the Collector upholds the objection. There is the next class of objections. Supposing the ryot

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has paid at once, it is summarily disposed of. Therefore, this objection that no rent is payable is equivalent to denying the title of the landlord is too much to read in that whole section. When he says no rent is payable, it means: I have already paid the rent and therefore no rent is payable, or that it is an inam land and therefore no rent is payable. It is too much to say that because rent is not payable, therefore there is no relationship of landlord and tenant. If there had been no relationship, that should have been the first objection. Hence, the objection is not at all sound and it is really too much to say that no rent is payable."

* Mr. K. P. RAMAN MENON:—"The section as drafted says if an objection is raised that the rent is not payable by division or appraisement, or that no rent is payable, and the Collector upholds the objection, he shall set aside the award. What Mr. Patnaik says is that along with the reasons mentioned, he visualizes other objections, viz., the absence of any relationship between the landlord and the tenant. There may be thousand and one reasons; but this is one objection which goes to the root of the matter. He wants that to be specifically mentioned. I do not see how that specification will affect the trend of the section or of the real meaning or the rights of the different parties."

* Sriman M. G. PATNAIK Mahasaya:—"So far as this matter is concerned, I am also supported by an authority—the Board of Revenue. In 1924, in a case reported in 19 Law Weekly, the Board of Revenue say: the jurisdiction of the Deputy Collector to entertain an application for appraisement depends upon the relationship of the landlord and the ryot being admitted. This petition was filed in the Revenue Divisional Office, Chatrapur, and the matter went to the Board of Revenue. The Board of Revenue threw out that application on the ground that the relationship was not admitted. That was a case of service inam resumed by the zamindar. The zamindar said that he treated it as a ryoti land and took proceedings under sections 74 and 75. There, of course, the relationship was not admitted. The Board has clearly stated that the relationship must be admitted. Otherwise, the landlord can sue the ryot for the recovery of the rent."

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p.m. "Here, it is purely a question of summary procedure. The law as it stands at present does not provide for an appeal. In such a summary procedure, the Revenue Divisional Officer is not expected to go into the question very minutely to determine whether the landlord has got the title which is denied by the ryot. In such a case, a suit would be more proper. I am supported by the authority of the Board of Revenue. The intention of the Legislature also is clear from the wording of the section that when the objection is upheld it does not mean that there should be a decision whether it is an inam land or otherwise as the question cannot be conclusively decided by the Revenue Divisional Officer. It is purely a summary procedure. In such cases, the question of title should not be gone into. Hence this amendment becomes necessary."

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* Diwan Bahadur Sir ALLADI KRISHNASWAMI AYYAR:—"Sir, there is a slight misapprehension in regard to this matter. The mere fact that a person raises a dispute cannot oust the jurisdiction of the officer, because anybody can raise a dispute. At the same time, there can be no doubt that the whole basis of the jurisdiction of the officer rests on the subsistence of the relationship of the landholder and the ryot. He must find as a fact at least for the purpose of proceeding that the relationship exists. The various sections here proceed on that footing, because you find in section 75 (2) 'If the opposite party objects that the rent is not taken by division or appraisement or that no rent is payable.' The expression 'no rent is payable' may apply to a case where the relationship is subsisting but yet no rent is payable. The whole basis of the jurisdiction under this chapter is the subsistence of the relationship. It is therefore dangerous to say that if a dispute is raised the jurisdiction of the officer is ousted. Of course, if you want to make it clear that it is open to the officer to go into the question tentatively at any rate whether the relationship between the landlord and the ryot exists, it should be done separately. This amendment interferes with the jurisdiction of the officer, because any man may raise a dispute in regard to the relationship of the landlord and the ryot, and that is an easy way of getting rid of the jurisdiction. Again, you will find in section 72 (2), 'If the opposite party objects that the rent is not taken by division or appraisement or that no rent is payable, the officer deputed shall record the objection but shall proceed as hereinafter provided and transmit the objection when submitting his award to the Collector.' His decision shall not therefore be final. If the object is to provide some kind of summary procedure in regard to the investigation of relationship, it must be done by a separate amendment."

* Diwan Bahadur A. APPADURAI PILLAI:—"Mr. President, I wish to have a doubt cleared. I understood, Sir, the procedure of the House was to confine its attention to such of the clauses or sections of the Act that have come under the scope of the amending Bill. In the present section, only a single word has been altered, 'raised' inserted for 'filed' and taking advantage of this alteration the Mover of the amendment tries to go into the relationship of landlord and tenant. This is unwarranted."

"The next point is that we are widening the scope of the section. The section merely says "If an objection is raised that the rent is not payable by division or appraisement, or that no rent is payable, and the Collector upholds the objection, he shall set aside the award.' As explained by Sir A. P. Patro, the rent might have already been paid or it may not be due being a service inam. We should not enlarge the scope of this section by introducing doubtfulness about the relationship of the landholder and ryot, which is a much larger question. I oppose the motion."

Mr. BASHEER AHMED SAYEED:—"It is not merely a case of ousting the jurisdiction of the officer, but here it is a case as to what circumstances should be present to set aside the award. In the section as it

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is recommended by the Select Committee, there are two circumstances mentioned; one is that the rent is not payable by division or appraisal and the other is that no rent is payable at all. Mr. Patnaik by his amendment wants to add a third circumstance, viz., that the Collector must find that the relationship between the landlord and the tenant is not beyond dispute. This third circumstance is sought to be introduced in order to enable the authority to set aside the award. The aim of the amendment is not to oust the jurisdiction of the officer on account of the plea of non-existence of the relationship being raised, but on the ground that the Collector finds that the relationship between the landlord and tenant is not really certain, or proved, or admitted. In those circumstances also, he can set aside the award. I do not see that the mere fact of raising a dispute about the relationship will enable the Collector to set aside the award. He must find that the relationship is not beyond dispute and then only he can set aside the award. The amendment may therefore be accepted."

The amendment was put and lost.

Section 75 (8) (e).

* Diwan Bahadur B. MUNISWAMI NAYUDU:—"I move, Sir—

'In clause 44 substitute the words "the District Court" for the words "District Collector."

'In clause 44 (e) delete the following:—

"whose decision shall be final."

"Sub-section (e) reads 'Where an objection of the nature described in clause (b) has been raised, the Collector's decision thereon shall be subject to an appeal to the District Collector whose decision shall be final. Such appeal shall be presented within thirty days from the date of the Collector's decision.' This is a new clause. Sir, we may differ from Sir Patro that the question of the relationship between the landlord and the ryot should not be raised at all here, but that it should have been raised earlier. If the Collector sees that there is no relationship between the landlord and tenant or if that is disputed, the jurisdiction of the Collector is ousted. And that question ought to be decided by a court of appeal. Restricting it merely to the District Collector would not be sufficient. It will be more satisfactory when the question of the relationship between the landlord and the tenant is concerned, that the civil court should have the jurisdiction to decide it rather than that the matter should be decided by the Collector seeing that his decision should be final. Suppose A takes proceedings as landlord, and B denies the title, the question whether A is the landlord or not is merely a question of title. The provision in this clause is that the decision of the Collector is final. Therefore I think that in a question involving title an appeal should lie to the district court and not to the District Collector. My other amendment is to delete

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'whose decision shall be final.' Those two amendments go together. When an appeal to the District Court is provided, the Collector's decision ceases to be final."

Mr. P. V. KRISHNAYYA CHOUDARI:—"I second it."

* Diwan Bahadur Sir ALLADI KRISHNASWAMI AYYAR:—"Mr. President, there is nothing in the section as it stands to oust the jurisdiction of the Court where the relationship is denied. Supposing a person is an utter stranger and the landlord wants to treat him as a tenant and avail himself of the machinery under this chapter. Then the whole case is without jurisdiction, and the party can certainly go to the civil court and ask for a declaration for the adjudication of his right. It is only in cases where the relationship between the landlord and tenant is admitted and where the question arises as to what exactly is the amount due by way of appraisement that the jurisdiction of the Collector is invoked under this section. Therefore, I am not able to see the necessity of a provision to bring in the jurisdiction of the civil court, because the fact here is that we are concerned with a case where the relationship between the landlord and the tenant is existing. If it is disputed you go to the civil court. The whole procedure from section 73 onwards is applicable only to cases where the relationship between the landlord and tenant subsists. If you find that there is no such relationship, the jurisdiction of the civil court is not ousted at all."

* Sriman M. G. PATNAIK Mahasayo:—"Mr. President, Sir, the hon. the Advocate-General himself used the words 'where the relationship between the landlord and the tenant is admitted;' then only the revenue office should have jurisdiction. That is what was intended under section 75."

* Diwan Bahadur Sir ALLADI KRISHNASWAMI AYYAR:—"I used the expression 'subsists'."

* Sriman M. G. PATNAIK Mahasayo:—"He did use the word 4 p.m. 'admitted,' and I have noted it down, Sir. But it does not matter. It is not expected that the revenue officer should go into the complicated question of title. If the title is denied, the best thing for the landholder is to go to the civil court. Now, the Bill has provided for an appeal to the Collector. There was no appeal before. That means such a complicated question should not be gone into by the Revenue Divisional Officer alone. What the officer concerned has to see in this connexion is whether the quantum of rent awarded is correct or not. Now, by rejecting my previous amendment, the legislature apparently thinks that the question of titles should be gone into. If a question of title is to be gone into, to whom should the appeal lie? Certainly it should lie to the district court and not to the District Collector as the former is more competent to hear appeals as to questions of title than the District Collector."

"Sir, the learned Advocate-General said that suits for declaration of title between the landlord and the tenant are not taken away. But

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the question is what is to become of the award which becomes a decree as soon as it is upheld by the Revenue Divisional Officer? That decree cannot be set aside in a civil court. So far as the decree is concerned, it is competent for the revenue court to grant it and the civil court cannot grant a decree declaring that the rent which has been decreed ought not to be paid. Such an injunction cannot be issued because it is competent to the revenue court to issue such a decree. Therefore, the ryot suffers; even though he succeeds in a civil court, that declaration will hold good only for subsequent faslis and not for the fasli for which the award was passed and upheld by the revenue officer. Therefore, as I said, the ryot suffers. The whole trouble came on account of the fact that my previous amendment was rejected. Therefore I submit that it is absolutely necessary now that an appeal should lie to the district court where alone the question of title can be gone into. Now there is no difference between clauses 75 and 77. Practically the question of title will have to be gone into here, and there also and no distinction is drawn."

* Rao Bahadur Sir A. P. PATRO:—"I am afraid there is some confusion in the discussion of this matter. My hon. Friends on this side think that the whole question of title should be gone into and therefore discretion should be given to the district court. I am afraid the whole principle on which this section is based is the subsistence of the relationship between the landlord and the tenant. Unless that relationship exists there cannot be any application to the revenue officer and no officer can be deputed. The whole thing becomes null and void. Therefore, the argument that the jurisdiction should be with the District judge is altogether beside the point, the basic principle being the relationship existing between the landlord and the tenant. As regards the award, whether it is in excess of the actual crop or whether it is less than the actual crop, as it is a case of ascertainment of the actual rent, it should be the province of the revenue courts. If in the course of the proceedings any question is raised as to whether the land has got a landlord or not, it will be recorded by the Revenue Officer and that record will enable the person questioning the title to go to the civil court. Therefore, so far as the award and the proceedings connected therewith are concerned, they refer to the recovery of rent in a summary manner. This is one of the ways in which recovery of rent is provided under the Estates Land Act. It is for this purpose that there is section 75 which refers to appraisement, then sections 77, 111 and 112 for the sale of the holding, distraint proceedings and so on. Therefore, the various means adopted for the purpose of recovery of rent are regulated, as they are matters affecting the relationship of landlord and tenant, by revenue courts. But if that relationship is denied by a tenant, it will be recorded by the Collector and the landlord will go before a civil court to establish his title to the holding of which appraisement has been made. That being clear I do not think my hon. Friend will still ask for the substitution of district court."

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MR. P. PEDDIRAJU:—"Sir, so far as section 77 is concerned a landholder sues for rent. It is a summary suit. No doubt, the Civil Procedure Code applies and evidence is let in. There is the decision. But where is the appeal? Naturally there must be an appeal to the district court in a case which relates to appraisement and division of the crop. It is more or less rent in the form of *varam*. If you want to take all rent suits under section 77 before the Collector, take this also. But when you are taking an ordinary rent suit appeal to the district court, I do not see any reason why in this case such appeal should not be permitted. That is the sole question with which we are now concerned. All other questions regarding jurisdiction between landlord and tenant are immaterial for this purpose. The general policy of the Act is that all rent suits should have an appeal to the district court. That being the case, I do not see any reason why an appeal in the case of appraisement of crop and distribution of crop should not go before the district court. Moreover, in the previous Act as also in the Bill introduced there was no appeal provided. It was only in the Select Committee that the appeal was provided. I do not know whether they have considered this aspect of the case. It is not the policy of the Government that certain suits should go before the Collector and that certain others should go before the district court. I think the hon. the Revenue Member will bear in mind the policy of the Act and agree to this amendment."

* Diwan Bahadur B. MUNISWAMI NAYUDU:—"Sir, you will see that section 74 provides for appraisement and determination of crops. This applies evidently to cases where rent is to be determined after the crop is cut and removed and the share has to be ascertained. Section 75 provides for an application being made and the sub-clauses provide how the ascertainment should be made. Clause (b) of sub-section (8) provides for objections being raised. Two kinds of objections are definitely mentioned there. It says:

'If an objection is raised that the rent is not payable by division or appraisement . . .'

"That goes to the fundamental question as to what is the system of rent that is applicable there. The second objection is that no rent is payable or that the rent has been already paid or something like that. The court may then uphold the objection and set aside the award. Sub-clause (c) says:

'If the objection is disallowed or if any other objection is raised . . .'

"That means apart from the two objections, that *varam* does not prevail or that the rent is not payable, the Collector should also consider any other objections and dispose of the matter. Then there are sub-clauses (d) and (e). Sub-clause (d) says:

'The Collector's order for payment of rent and costs, if any, shall be final unless an objection of the nature described in clause (b) has been raised and shall be enforceable as a decree for arrears of rent.'

"So that, if there are other objections than the two mentioned, then even, the Collector's order becomes final and there is no appeal. If an

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objection is raised that there is only so much produce, there is no appeal. You have provided for appeal only in cases where these fundamental objections such as rent is not payable by division or appraisal or that no rent is payable, are raised. Now the order is virtually a decree for arrears of rent. The general scheme of the Act is that there should be an appeal in such cases to the district court. My point is that this case should also be treated on a par with suits for the recovery of rent and appeal should be to the district court."

Mr. K. P. RAMAN MENON:—"I think the amendment may be accepted."

The hon. Sir ARCHIBALD CAMPBELL:—"The reason put forward by Mr. Peddi Raju and elaborated by Mr. Muniswami Nayudu seems to indicate that this is somewhat similar to a suit for recovery of rent. I agree that this may go to the district court in this particular case."

Diwan Bahadur B. MUNISWAMI NAYUDU:—"Sir, apart from the question of my amendment, Government may consider the question of putting this in the schedule rather than in the section itself. If it is put in the schedule other consequences may follow. That may be done in the third reading stage."

The amendment was put and carried.

Clause 44, as amended, was then put and carried.

Clause 45.

Section 77.

* Diwan Bahadur B. MUNISWAMI NAYUDU:—"Sir, I move that—
'For the words "*before the Collector*," substitute the words "*in a competent Civil Court of original jurisdiction*."

"This is a question which I bring forward with a view to advocate that suits for rent should be within the jurisdiction of the civil courts and not be left to the Revenue courts for disposal.

"Sir, the question whether suits for rent should be filed in the Revenue courts or in the civil courts is an old one. There has been difference of opinion on this question; but I put forward the tenants' view that the change to a civil court would be most beneficial. I know, Sir, that the advocates of the Revenue court are not tired of saying that it is in the interests of the tenants as well that they prefer the Revenue court. They say that the Collector disposes of suits quickly and summarily and therefore the tenants are benefited. That the suits are disposed of summarily and quickly is true, but it is just my complaint that these are matters which ought to be disposed of much more carefully. You will see that, whatever may be the object of these summary courts, so far as the scope of this Act is concerned, the whole procedure of the Civil Procedure Code has been embodied and made applicable to the procedure before Revenue courts. So that, however much advocates of the Revenue courts would like that the Collector

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should be one in the position of a generous Mabap sitting over the landholders and tenants and disposing of these cases very quickly and summarily, yet, unfortunately, as the procedure in the Civil Procedure Code has to be thoroughly applied, it may not be possible for the Collectors to devote the necessary time to this. With their hands full of revenue, magisterial and other work, this work with regard to rent disputes, they would have to postpone to the end of the day and naturally it would not receive the attention necessary for a satisfactory decision being come to.

"There is another point which I want to mention in this connexion. It is really very difficult for the tenants to conduct their cases before Revenue courts. I could very well understand if, under this Act, the Government take power to appoint special Collectors who will, like civil munsifs, dispose of cases devoting their entire attention to this work. That would be very satisfactory. There are instances in which special Deputy Collectors have been appointed in certain areas where work is heavy with orders to attend to this work only and nothing else, though it might be said that their decisions cannot be as satisfactory as the decision of civil munsifs.

"So far as this Act is concerned, it vests the jurisdiction in the Collector, who is generally the Revenue Divisional Officer; and except where a special Deputy Collector is provided, when these cases come before the Deputy Collectors, the result is they are not given the same amount of attention that is required for them. The Deputy Collectors in their tour programme have to rush through a lot of work, magisterial and other kinds of work, and they cannot be expected to devote that attention to these cases that is necessary. It is an excellent dictum that the Collectors should go to the doors of the tenants and dispense justice. I do not know how far these people go to the doors of the ryots. On the other hand, it is easy for a ryot to go to a munsif's court situated within a convenient distance from his village. He can engage a vakil for him or even his clerk will give him advice as to what to do. But now, he has to appear before the Collector who may be camping at a distance, taking a vakil with him and incurring heavy expenses in other ways also. Anybody who is connected with the courts is aware how in the course of disposal of suits which are conducted under the Civil Procedure Code, various stages have to be reached. First a date is fixed for hearing, then a date is fixed for fresh summonses, afterwards a date is fixed for filing written statements, after written statements are filed issues have to be framed, and then time is given for filing documents, and then for letting in fresh evidence, and so on; and if a witness is not present, at a particular date, further delay takes place. All this means that a suit has to be disposed of not in one sitting but in various sittings; and if in any sitting if the tenant or if the vakil is absent, the whole thing goes. The difficulty will not be the same if he has to file a suit at the headquarters in the District Munsif's court, where even if a tenant cannot appear, the vakil or his clerk may attend to the intermediate stages and this will save the poor tenant from these

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additional expenses. I shall mention one other experience in this connexion. Sometimes a landlord has to file forty or fifty suits. He has got a clerk or an authorized agent with power-of-attorney and he goes to the camp of the Collector to represent the landlord. In cases where there is no dispute, an ex-parte decree is given but where there are disputes, the ryots engage a common vakil, and if the vakil is not present or unless all the tenants are present, the cases of those who were not present go by default. The ryots suffer because every one of them cannot appear. One among them may be present but the other people not being present, their names are scored out and ex parte decrees are passed against them. Besides they have to pay heavy fees to the vakils to go to places away from the headquarters. It may be said that the rent courts can deal with these things much more quickly. As one who is acquainted with the courts, I think the Small Cause Court or a Munsif's court disposes of justice much more quickly than the Revenue court. Most of these suits will be in the nature of small cause suits for recovery of rent. Much time may be involved in disposal of original suits but in regard to small cause suits they are disposed of much more quickly. In cases where there is a real dispute it is better and more desirable that such complicated and involved questions should be decided by a court which sits especially for that purpose. I think in these circumstances, it is time enough to change the procedure so far as rent suits are concerned whatever may happen to other applications under the Act as to survey and measurement and so on. This may be attended to by the Deputy Collectors or Collectors. So far as disputes involving rents are concerned, it is much better that the lower courts to deal with them are civil courts which can dispose of satisfactorily and which are set up for that purpose and not Revenue courts which go in the name of summary courts. The summariness itself shows that the trial will not be satisfactory. My amendment is restricted only to suits for rent. With regard to applications for sales under the distraint procedure, by all means, let the Collectors dispose of them as they are now doing, for some time. If ultimately it should be found that they also should go to the civil court, they may go. I therefore move my amendment."

* MR. C. R. PARTHASARATHI AYYANGAR:—"I second it. I may add to what my hon. Friend said that in my experience of the courts, the difficulty is to get justice in a Revenue court, especially when a question of law arises. You will see, Sir, that when the so-called suit is filed, in a summary court, the general rule is, an officer who is in charge generally posts them to the fag-end of the day, and goes on adjourning it until he gets an assistant or another Collector to relieve him of his duties. This has been going on at least in my district whenever there is heavy accumulation. There are other difficulties which have been often felt. Whenever we file any documents, especially original and important documents in a summary court, it is very difficult to get them back. I know bundles and bundles especially of original documents have disappeared. They somehow disappear, but in a civil court you

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have got a definite idea as to what the documents are which are filed. A record is kept for such things. Again when execution proceedings are taken in a summary court, one does not know whether any petition has been filed at all, whether the petition is in time or not. But in the civil court the whole thing is kept methodically and systematically, so that you may know where exactly you are. The Revenue Officer who is an itinerant officer is generally given one clerk and that clerk has to attend to many things and move from place to place. Whereas in a munsif's court, for this thing alone a number of clerks are appointed. There is another difficulty that is very often felt with regard to Revenue courts. If judgments are pronounced the parties do not know the dates when the judgments are pronounced. No notice is given to the parties and they do not know when the judgment is pronounced, but only when they apply for copies of the judgment, they are given. In every appeal or batch of appeals filed in a district court, an application also follows the suit, stating that the appeal is not in time and that the delay may be excused, because the party was not aware of the date when the judgment was pronounced. He is intimated only by somebody and by that time the appeal is barred. In regard to summary courts, sometimes for a batch of suits one judgment is given. If you apply for copies of decrees, you do not get them easily. The drafting of the decrees is one of the difficulties felt in a summary court. The poor clerk does not know how to draft a decree or to check the memorandum of costs so that the machinery that is there is very defective and unless there is a whole department presided over by a District Munsif or by an officer of original jurisdiction it is impossible to get justice in a summary suit. I have very often seen that when complicated questions come up, the Revenue Officer adjourns the cases. Again jodi suits in the zamindari are now filed in civil courts. They do not come for the recovery of jodi to Revenue court, so that you will find in cases of inams in case of rents that you have to recover from the inamdars or any intermediary, the landlord will go to the civil court. But here is something very difficult to comprehend. As regards one set of suits where the zamindar wants to recover from an intermediate landlord, you go to a civil court whereas for recovery of rent you go to a rent court.

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"As regards the recovery of rent you will have to go to revenue court. All these difficulties can be obviated by giving the entire jurisdiction to a civil court, because you will have the satisfaction of having given due justice and the parties will have the satisfaction that they have been fully heard and questions of law thoroughly grasped. So far as the executive work is concerned, the payment of batta and the filing of records are more satisfactorily done in a civil court. The general drift of opinion among the zamindars has always been one of seeing that they go back to a civil court because justice is better rendered to them there."

* MR. T. S. RAMASWAMI AYYAR:—"I desire to support the amendment. So far as section 77 is concerned, suits filed under that

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section are suits for arrears of rent and the suggestion is the convenience of parties dictates that such suits should be filed in a court of original civil jurisdiction rather than in the revenue court. With regard to the matter of convenience, the House knows that the Deputy Collectors who try these suits are itinerary officers and often times cases are posted in a place when the Deputy Collector is miles away from the estate. It is not as if the Divisional Officer is always able to camp in or near the estate itself. Instead of his being able to help the tenant or the zamindar by camping near the estate, it may happen that owing to exigencies of duty he may camp in a place far away from the estate. Even in cases where Special Deputy Collectors are appointed, things are no better. Cases are filed in the court of Deputy Collectors and Divisional Officers in the jurisdiction of which the estate is located. The District Collector subsequently transfers some of those cases to the file of the Special Deputy Collector. In such cases the parties have to go to the office of the Special Deputy Collector and have to engage counsel in that court after having engaged different persons as counsel in the court of the original Deputy Collector. In these circumstances is it not a matter of convenience to both parties that they should be allowed to file their suits in a civil court?

“Under the present section suits against a surety or against a depository or bailee cannot be filed before the Divisional Officers. Such cases can be filed only in the civil courts having the jurisdiction. If suits for rent are allowed to be filed in the court of a Divisional Officer, it may be convenient for the zamindar to engage a standing counsel who may be able to go to a Deputy Collector's court. But in the case of a poor tenant it will not be possible for him to get counsel to attend a case in a Deputy Collector's court to get his grievances redressed, unless perhaps all the tenants join together.

“Again on the question of the competency of the courts to try these suits, certainly a civil court will be in a better position to decide cases arising under section 77. These suits, though they are called summary suits, are not really summary suits. They are instituted for arrears of rent. Questions of title arise. In such cases certainly a civil court is far more competent than a revenue court to decide them. For these reasons I have great pleasure in supporting the amendment.”

* MR. K. P. RAMAN MENON:—“It must be well within the knowledge of all lawyers and more especially of the learned Advocate-General that when they are taken to distant stations they demand more fees. As a matter of fact if there is a court situated within 12 miles of a particular village, if a lawyer has to be engaged to conduct cases in that court it will be easy for the parties because there are resident lawyers there. But what happens when officers go on circuit and the parties have to engage vakils to plead their cases in a far off place they, the vakils, naturally demand more money. Added to this the parties have to pay conveyance charges such as motor car hire or if motor cars are

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not available, they will have to pay for country carts. All these expenses the parties have to bear. As for the competency of a civil court to try these cases, I do not want to harp on the same points which other speakers have dealt with. I support the amendment."

* Mr. T. C. SRINIVASA AYYANGAR:—"Sir, it is surprising that so much learning and argument is necessary over so obvious a proposition that the inherent jurisdiction of courts of law should be preserved in the matter of suits regarding arrears of rent by zamindars against their tenants. There is really no reason for depriving the civil courts of this jurisdiction. Much has been said about the greater familiarity of revenue officers with questions relating to rent. More complicated questions of law are dealt with daily by munsifs. Certain friends have insisted that Collectors should be specially appointed for the purpose of hearing and disposing of the suits arising under the Act and that they should have fixed headquarters. That by itself cannot solve the difficulty or add to the convenience. Under the Estates Land Act, as it is, such a provision for the appointment of special Collectors for this purpose exists. In the Ramnad district, there has been such a Deputy Collector for several years. Sometimes, there were even two. The headquarters of that Deputy Collector is Manamadura. I desire to deal with the question of convenience in this connexion. The Ramnad district spreads on all the four directions of Manamadura. There is a Munsif's court at Manamadura itself. There is one at Paramakkudi 15 miles to the east of it and one at Ramnad 23 miles east of Paramakkudi. There is a Munsif's court 11 miles north of Manamadura at Sivaganga and one at Devakottah 30 miles north-east of Sivaganga. There is a Munsif's court at Sattur about 50 miles south-west of Manamadura and one at Srivilliputtur west of Sattur. It is obvious from these that from the point of view of distance or proximity, location of a stationary Estates Land Act Collector at Manamadura has not at all tended to the convenience of either the landholder or the ryot. People have to pass through the place of the several Munsif's courts mentioned above in order to reach Manamadura. Further, it is wrong to think that the suits under the Act only involve considerations regarding the propriety or otherwise of the rates of rent. Questions regarding transfers of property, partition, succession often times arise in respect of suit. Nobody can say that the decisions of the civil courts regarding them were unsatisfactory when under the prior Act VIII of 1865, both the civil courts as well as the revenue courts had jurisdiction. Considering all the aspects, the more proper and convenient and less objectionable course appears to be to restore the jurisdiction of the civil courts."

Mr. ABDUL HAMEED KHAN:—"The amendment before the House is certainly an amendment which is intended to give relief to the tenant with regard to a matter in which he could get proper justice done to him. In such a case he should be enabled to go to a court established by law and not to a court where justice is rendered at

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the whims and fancies of particular officers. Hon. Members who have spoken before me have spoken from their personal experience as to how a litigant in cases like this has to wander from place to place or go to a long distance in order to get his grievances redressed. If he has to go to a civil court he has to go to only one place where the civil court is situated. It is not moving from place to place, and he knows where to go in order to get facilities for the conduct of his case. With regard to the employment of lawyers it is not possible for poor people to engage lawyers to go to distant places and pay them very heavily. Not only will they have to pay very heavy fees but they will have also to pay for very many other things. As has been pointed out it is not possible for a District Collector or a Deputy Collector or Revenue Divisional Officer to find time for trying these cases, because his hands are almost always full with other work. All these years we have been crying for separating judicial work from the executive work and then why should we when we are enacting a legislation in modern times go back to olden times and hand over the jurisdiction in trying these cases to revenue courts instead of handing it over to courts, which are constituted not under the executive authority but under the statute.

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"We find there is a disparity between the two parties in this issue that is the landlord and the tenant. It is very easy for the landholders to run up in two hours to the Collector or the Deputy Collector even though he may be camping hundred miles away from his place, but we know that in spite of the modern conveniences of quick and easy locomotion, it is very difficult for the ryot and he will have to undergo a great hardship if he is called upon to move from place to place without any fixed idea as to where the officer is camping. It is important therefore that at least in this matter we should try and prevent any additional burden being thrown on the tenant."

* Diwan Bahadur A. APPADURAI PILLAI:—"Mr. President, Sir, a number of illustrious and senior members of this House have all spoken in one strain on this amendment and I am afraid I shall strike a discordant note. In the first place the farmers of this amending Bill have consistently kept before themselves the policy of keeping the provisions as simple as possible. In several of the previous sections that we have already considered, *suits* preferable before the revenue court have now been converted into *applications* in order to do away with the technicalities attaching to *suits*. If a suit is filed, a number of formalities have to be gone through: plaints, written statements have to be filed, stamp fees collected and so on. All this is done with a view to secure expedition and to minimize expenditure. Applying this principle it is proposed here that suits should be filed before the same authority before whom applications are filed, in order that the whole procedure may be unified.

"Sir, arguments that have been advanced against the filing of suits in revenue courts may with equal emphasis be advanced against the suits in civil courts. I wish now to meet a few of the arguments advanced

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against the filing of suits in revenue courts. One hon. Member stated that so far as questions of law were concerned, revenue officers were nowhere as compared with civil court officers. This may or may not be true, but I should remind the hon. Members that no big question of law ever enters into trivial cases connected with the recovery of rent. There are several questions concerning the relationship of the landlords and the tenants where mighty questions of law enter, but in a simple question of rent recovery why should we introduce pure questions of law which require legal luminaries to solve? Another argument advanced was delay in the disposal of suits by revenue courts. On this point I am speaking with a certain amount of authority after having had to dispose of a number of suits under the Estates Land Act. (Interruption) Sir, I should like not to be interrupted, for such interruptions disturb the trend of my arguments on the subject. As regards delay, I can say that the work connected with suits disposed of by the revenue courts is always subject to the vigorous scrutiny of the higher authorities. I may inform hon. Members that the business statements of revenue courts are scrutinized with a large amount of care by the Board of Revenue the highest controlling authority in revenue matters, and it will not be to the interest of any revenue officer who has got his promotion in his mind to delay papers or suits. Whenever the Board of Revenue finds that a number of suits have accumulated in a particular court, they take immediate steps to appoint a special Deputy Collector to devote his sole attention to this work. Reports are also received from time to time from the Collectors of districts as to the amount of work done by the special officers, and the progress made by them. The number of pending suits on the file of the revenue courts is thus kept down as much as possible. I do not know if the High Court or the district court does as much with regard to civil courts. The fact remains I repeat that scrupulous care is taken by the authorities to avoid delay in the disposal of suits.

"It was also stated by some hon. Members that revenue officers are itinerant officers and they go on camping from place to place with the result that litigants and their vakils are put to much inconvenience and loss and sometimes the litigants go without the aid of their vakils. (Interruption) I may mention here that by means of executive orders, revenue officers are enjoined (Interruption). . ."

* The hon. the PRESIDENT:—"The hon. Member need not be interrupted."

Diwan Bahadur A. APPADURAI PILLAI:—"Orders are sent from time to time by the Board of Revenue and by District Collectors enjoining revenue officers to try cases under the Estates Land Act as far as possible in their headquarters and dispose of them while they are there. I have myself received several circular orders of the kind and have obeyed them. These are more or less standing orders which the Revenue Divisional officers cannot afford to ignore. They have to stay at headquarters, dispose of the pending suits before they go into camp. Of course this practice may not perhaps obtain in a few districts. (Mr. Basheed Ahmed

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Sayeed. You admit that?) Every Revenue Divisional officer should post revenue cases as far as possible in the division headquarters so that the parties and their advocates might not be inconvenienced.

"Another point that was mentioned by the hon. Members was that when judgments are delivered by the revenue courts, the parties do not know whether they have been delivered and what the judgments are. It is rather surprising to hear this. This is probably due to the fact that on the day on which cases are posted for judgment, neither the parties nor their advocates care to go to the court. If the parties attend courts on the day of judgment, they are quite welcome to apply for copies of judgment. It is not the fault of the revenue courts if parties are unaware of the judgments. I would go further and say that there are executive orders to the effect that orders passed by the Revenue Divisional Officer in suits and applications should be communicated to the parties concerned.

"After all these are matters of technical procedure which could be regulated by means of executive orders. There is no reason why the jurisdiction of the revenue courts should be ousted with reference to rent recovery suits on this ground.

"One of the hon. Members stated that it cannot be said that the civil court officers, the Munsifs, are less competent than Deputy Collectors and Revenue Divisional Officers. Nobody denied the competence, the integrity or the cleverness of the officers of civil courts. The presiding officers in revenue courts are equally competent. But the real question is which is more advantageous to the tenant and the landholder—the civil court or the revenue court? If any officer knows the ryot, and knows his needs, and requirements intimately, it is the revenue officer. I do not think that this can be said of the officers of the civil court. I say once more and I am sorry I have to repeat it, that a deep knowledge of civil law is not necessary to dispose of cases arising under the Estates Land Act. Rent recovery is after all a small question; it is not a question of possession, it is not a question of succession or title. I would request hon. Members to kindly bear this fact in mind. To deal with questions of recovery of rent, what legal competence is necessary? Any person with ordinary commonsense and knowledge of the Estates Land Act ought to be able to dispose of suits filed under it.

"There is one other point, Mr. President. A somewhat serious charge has been made by an hon. Member of this House against revenue courts. He said that valuable records filed before revenue courts are not returned to the parties. It is rather unfortunate that such a charge should have been made against a body of officers who are not represented in this House. (An hon. Member: You are representing them here.) To make a serious allegation like that against officers who are not here in this House to controvert them is rather unfair. If the records are not returned what is the remedy? They must be applied for and if they are not returned, the conduct of the officer in question must be reported to the controlling officers. My experience however is that the parties who

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file the records do not care to take them back. Huge bundles of records which the parties do not care to take back get accumulated. The officers do their best to return them to the parties. If records are not returned to the parties, they are themselves to blame and not the revenue courts. One side of the picture was presented to the hon. House and I have now presented the other side of the picture and shown the real reason why parties do not get back their orders.

“Why talk about records let us take revenue deposits. The House will be surprised to hear that moneys paid into the revenue courts are not taken back. Though a number of intimations are sent the response is very poor. Even though parties know that deposits would be refunded to them, when they are no longer required they do not care to obtain refunds. I wish the hon. the Revenue Member will please take note of the serious allegation made by the hon. Members in this regard.

“One more point and I am done. The clause as re-drafted does not give more power or interfere in any way with the jurisdiction of the civil courts. If it is stated here in this clause that suits regarding rent should be filed in revenue courts, it is only a repetition of the provision from the existing Act.

“I have taken much of the valuable time of the House; I thought it was wrong on my part to keep silent when the hon. Members of this House attacked revenue courts, and I was anxious to explain the correct position.”

* The hon. the PRESIDENT:—“The further consideration of this amendment may be continued on Monday next.”

III.—PENDING BUSINESS FOR THE CURRENT SITTING OF THE COUNCIL.

Dr. P. SUBBARAYAN:—“May I ask the Hon. Gentleman, the Leader of the House, the nature of the business that will come up before the House and whether the Government intend to allot any non-official days and, if so, when those days will be allotted?”

* The hon. Sir MAHOMED USMAN:—“The question of allotting non-official days is under the consideration of the Government and I will be able to inform the House sometime on Monday. The idea is, I take it, to finish this Bill on Tuesday evening; on Wednesday, we shall transact the other official business—Official Bills and Supplementary Demands which have been entered in the agenda.”

The House then adjourned to meet again on Monday at 11 a.m.

R. V. KRISHNA AYYAR,
Secretary to the Legislative Council.